Supreme Court, U.S.
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No. 00-325

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In The

Supreme Court of the United States

WILLIAM F. WENDT, Jr.,
Petitioner, Pro Se

v.

Board of Trustees of the
UNIVERSITY OF ILLINOIS, et al.,
Respondents

On Petition for Writ of Certiorari
To the Seventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

William F. Wendt, Jr.
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87 pp

ISSUES PRESENTED

1. Whether lower federal courts can "reject" an argument, based upon actual language of Supreme Court decisions and legislative intent, without answering or even mentioning it, without also abandoning any notion of binding authority, *stare decisis,* due process, judicial responsibility, or peaceful redress of grievance, without also reducing judicial relief to a political favor and the grand Anglo-American legal edifice to a bunch of crooks taking care of each other; whether "judge nullification" is an open invitation to jury nullification.

2. Whether a hypothetical jurisdictional bar is any jurisdictional bar; whether lower courts can misread Rooker v. Fidelity Trust, 263 U.S. 413, and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, into a "Rooker Feldman doctrine" that forbids any federal inquiry into state court proceedings, without regard to the actual language of the decisions, or, indeed, the inquiries they and other federal cases conducted; whether *Rooker Feldman* does allow, and long-standing federal policy mandates, district court jurisdiction over a state court decision that 1) did not rule on the state constitutional questions presented, 2) tampered with the factual premises of the case, and 3) did not specify the claimed factual deficiencies in the original state complaint.

3. Whether the Civil Rights Acts of 1866 and 1871 confer lower federal court jurisdiction over closed state courts, closed state courts being those failing to meet the standards of Rooker and Feldman; whether federal intervention into *sub-Rooker* litigation is essential to redressing the badges and incidents of slavery and maintaining the rule of law; whether 42 USC 1981 requires an allegation of racial discrimination; whether this Court will ever get another chance as ripe as this to insist that every litigant is entitled to an exercise of jurisdiction, a full and fair hearing, and a ruling

responsive to the issues, per Rooker, to an application of law to the facts and a decision on the merits, per Feldman, in both state and federal court.

4. Whether res judicata, as well as sovereign, judicial, prosecutorial, and legislative immunities apply; whether such immunities, applied unconditionally, are a reversion to feudalism.

5. Pending a restoration of proper state authority, whether an immediate remand to federal trial court is necessary to impose a constructive trust on assets obtained with the unconstitutional state legislative appropriation in question, to prevent their fraudulent sale, to preserve some shred of the status quo, and to preserve this Court's authority and efficacy.

6. Whether lower federal court judges are too close to state court judges to properly pass upon *Rooker Feldman* cases.

7. Whether the petitioner was arbitrarily deprived of en banc consideration by the 7th Circuit.

8. Whether "prayer" to civil courts is just as unconstitutional as prayer in public schools and a menace to the judicial process.

9. Whether the 7th Circuit constructively certified this matter under 28 USC 1254(2) through its refusal to mention, much less resolve, the jurisdictional question and its failure to even mention the request for en banc consideration; whether it should at least be instructed to issue an opinion quoting the same passages from Rooker, Feldman, and the Reconstruction Congresses quoted in Wendt's appellate briefs and quoted or cited here; whether remedial action by this Court is mandatory, lest it too become party to the ultra vires actions of the lower courts in this matter.

LIST OF PARTIES

WILLIAM F. WENDT, Jr., an American citizen,
Petitioner, Pro Se

v.

Board of Trustees of the UNIVERSITY OF ILLINOIS,
James Stukel, University President;
STATE COMPTROLLER LOLETA DIDRICKSON
(or her successor);
SPEAKER of the ILLINOIS HOUSE of
REPRESENTATIVES MICHAEL MADIGAN;
Former SPEAKER of the ILLINOIS HOUSE of
REPRESENTATIVES LEE DANIELS;
ILL. STATE REP. SHIRLEY JONES (6th)

BURDITT & RADZIUS, CHTD., NORMAN JEDDELOH,
DAVID ROWND; ILL. ATTY. GEN. JAMES RYAN,
SOLICITOR GENERAL BARBARA PREINER, ASST.
ATTY. GEN. PAUL RACETTE, ASST. ATTY. GEN.
TERESA A. TYSON, ASST. ATTY. GEN. JAMES
CROWLEY, ASST. ATTY. GEN. GARY M. GRIFFIN,
MICHAEL KASPER, and MADIGAN &
GETZENDANNER

CIRCUIT COURT OF COOK COUNTY
JUDGE THOMAS DURKIN

APPELLATE COURT OF ILLINOIS JUDGES
WILLIAM COUSINS, ROBERT CAHILL,
(former) MARVIN LEAVITT, JILL McNULTY,
JOSEPH GORDON, and JOHN HOURIHANE,

JUSTICES OF THE SUPREME COURT OF ILLINOIS
CHARLES FREEMAN, JAMES HEIPLE, MARY ANN
McMORROW, MICHAEL BILANDIC, MOSES
HARRISON, BENJAMIN MILLER, and
(former) JOHN NICKELS, Respondents

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CITATIONS

1. The orders of the 7th Circuit Court of Appeals (99-3409) and of the District Court for the Northern District of Illinois (98 C 7226) are unpublished.

JURISDICTIONAL STATEMENT

2. The panel order was issued on May 4, 2000. The order denying the "petition for rehearing" (although a petition for rehearing en banc was filed) was issued May 31, 2000. An order denying the motion to recall and stay the mandate (a resubmitted motion to vacate or at least correct the order, arguing ignored jurisdictional issues) was denied on July 10, 2000.

3. This Court has jurisdiction of this matter under 28 United States Code 1254(1) under this petition, and under 28 United States Code 1254(2), in that the 7th Circuit constructively certified the matter by failing to mention the jurisdictional argument and the request for en banc consideration.

CONSITUTIONAL PROVISIONS AND STATUTES

4. See 12a-13a for the 13th Amendment, 14th Amendment in pertinent part, 42 United States Code 1981(a) in pertinent part, 42 U.S.C. 1983 in pertinent part, 42 U.S.C. 1985 (2), (3) in pertinent part, and 42 U.S.C. 1986 in pertinent part.

STATEMENT OF THE CASE

5. Three times in May 1994 a group of vendors on the historic Maxwell St. market and Wendt went to Springfield to stop the $20 million state appropriation for the University of Illinois at Chicago to wipe out the market. On May 25, 1994, the third time, they appeared for a hearing before the House higher education committee with UIC and the City of Chicago also present. Several times during that hearing the committee promised a hearing in Chicago, and likewise promised notification. Several times, too, Rep. Shirley Jones (6th) called the appropriation a "done deal." (see complaint, 19a-25a)

6. On June 15, 1994, however, Jones, whose district includes UIC, held a hearing in Springfield on the appropriation with notification, apparently, only to a

select few favoring the appropriation. All its speakers favored the appropriation, including former Chicago alderman Ted Mazola (1st), archenemy of the market, who called it a "fait accompli." Two members of another vendors' group spoke, one in Spanish, the other beginning as a translator of his remarks, but going far beyond them, and only about relocation of the market. The university has been disbursing the appropriation and occupying the former market since September 1994.

7. Wendt filed a state lawsuit in August 1995, 19a-25a, which sought principally to have the appropriation declared unconstitutional as violating Art. 4, §7(a) of the Illinois constitution requiring reasonable notification of legislative hearings and Art. I, §5 protecting the right to peaceably assemble, petition for redress of grievances, and inform public officials. Defenses of sovereign immunity and the enrolled bill rule (Art. 4, §8(d) of the Illinois constitution, prohibiting lawsuits on legislative procedure) were offered by the respondents and upheld by the trial court. There was no visible concern by court or counsel that sovereign immunity under Illinois law would put the matter in the Illinois Court of Claims, a legislative advisory body that cannot perform judicial review, as Wendt plainly contended. Never mind, either, taking Wendt's statement, "no allegations of wrongdoing," completely out of context, without asking him any specific question about it, or anything else, for that matter. The trial court merely read a prepared ruling into the record, leaving Wendt to guess what he was arguing against. Plus, it denied the motion to amend the complaint because it does not cure allegedly fatal but still unspecified defects. At another hearing the trial court blew off the motion for rehearing, 26a-46a, as "nothing new" with another prepared statement, never mind that it presented an extensive discussion of the enrolled bill rule, ¶¶5-18, again with no one asking Wendt any specific question or making any rebuttal.

8. On appeal the other side's briefs ignored or ridiculed the constitutional purpose of the notification

requirement, public participation in the legislative process. Wendt's reply brief accused opposing counsel of inviting the court to abandon the judicial function for that of sultans, potentates, commissars and gauleiters. The appellate court opinion, 14a-18a, did just that, without the requested oral argument, not ruling on any legal question, quoting "no allegations of wrongdoing" no less than four times, echoing the trial court on fatal but unspecified factual defects and "nothing new," and even making the totally gratuitious, unfounded statement that Wendt was at the hearing. The petition for rehearing was denied without comment. The petition for leave to appeal in the Supreme Court of Illinois asked in so many words whether there is peaceful recourse in Illinois legislative and judicial processes. The motion for reconsideration in the supreme court cited the duty of courts to rule on constitutional questions and threatened a federal lawsuit if such a ruling was not forthcoming.

9. On November 12, 1998 Wendt filed a federal action naming the original state defendants and all the judges and lawyers in the state case, seeking, in part, declaratory relief that the state court proceedings are null and void. The jurisdiction of the court was invoked under Art. IV, §4 of the United States Constitution, the 13th Amendment, the 14th Amendment, Title 28 U.S.C. §§1331 and 1343(3), 28 USC 2201, 2202, and Title 42 U.S.C. §§1981, 1983, 1985(2), 1985(3), 1986, 1988. In short, there was alleged a deprivation of the benefit of a proceeding (the legislative hearing) for the protection of property (Wendt's stake in State of Illinois funds), deprivation of the right to sue, and conspiracies to impair the course of justice. The other side filed motions to dismiss, by three separate counsel, citing res judicata, statute of limitations, *Rooker Feldman,* insufficient allegation of conspiracy, judicial, prosecutorial, legislative, and 11th Amendment immunities, and no allegation of racial discrimination under §1981.

10. Wendt moved for a judge from out of state on grounds of a common social life among state and federal judges, a notion attacked and denied as speculative. An amended complaint was allowed in March 1999, which corrected an insufficient naming of state court counsel and added three counts. The respondents again moved to dismiss, appending, as before, the state court complaint, appellate court decision, and the preliminary opposition with the "no allegations of wrongdoing" statements. Wendt's objections were stricken over a disputed question of format by a substitute judge. Wendt filed his truncated objections, addressing the defenses offered, arguing a failure to rule on constitutional issues and tampering with the factual premises of the case. It appended the trial court motion with the constitutional arguments, 26a-46a, and the Illinois supreme court motion for reconsideration with the threat of a federal suit, itself appending in turn the preliminary opposition with the "no allegations of wrongdoing" statements. The respondents replied. On July 2, 1999, without oral argument, the trial court dismissed the amended complaint, citing "Rooker Feldman doctrine." 7a-9a.

11. Wendt moved to alter or amend the judgment, largely on previously cited but ignored grounds, but also asserting authority under Reconstruction statutes to deal with closed courts. In their answer the respondents represented by the Attorney General's office, seconded by the university respondents, cited requirements for a motion to alter or amend as if Wendt's motion did not raise a question of law. Madigan's answer was only generalities. Wendt's reply quoted the ignored passages of Rooker and Feldman directly and objected to the respondents' special pleading as impugning the integrity of the court. An order of August 19, 1999 denied the motion to alter or amend the judgment. 5a-6a.

12. Wendt timely filed a notice of appeal on September 16, 1999. On October 27, 1999 he moved for judges from outside the 7th Circuit (appending an August 1999 Chicago magazine article on the Chicago

elite's great favor trading economy) and a remand to the trial court, also making plain that *Rooker Feldman* was an issue. It was denied.

13. Wendt filed his brief on November 30, 1999, arguing requirements for state court proceedings from the actual language of Rooker and Feldman, also citing six statements of Congressional intent that the Civil Rights Acts of 1866 and 1871 confered jurisdiction on lower federal courts over closed state courts.

14. The respondents filed a joint brief on February 14, 2000. It also argued res judicata, state not a person, and statute of limitations, as well as sovereign, judicial, prosecutorial and legislative immunites, should *Rooker Feldman* fail.

15. Wendt moved on February 16, 1999 for an extension of time and pages to file a reply brief on issues precious few lawyers would deal with and for production of state court documents for sua sponte consideration of jurisdictional matters, also asking whether he should address whether 42 USC 1981 required an allegation of racial discrimination and other defenses. The motion was denied.

16. Wendt filed a reply brief on February 28, 2000 addressing *Rooker Feldman* and the other side's issues.

17. On May 4, 2000 the panel issued an unpublished order, without oral argument, 1a-4a.

18. On May 18, 2000 Wendt filed a petition for rehearing en banc, taking severe exception to "Rooker Feldman doctrine" that prohibits inquiry into state court decisions, and to ultra vires action by the court, under the topics, Is a Hypothetical Jurisdictional Bar any Jurisdictional Bar? / Can a Different Statute (or Two) Confer Jurisdiction? / Do *Sub-Rooker* Decisions Endanger the Rule of Law? / Does Res Judicata Have Requirements? / Are Immunities a One-Way Street? / Does Failure to Answer Questions Attack the Judicial System? / What Ever Happened to *STARE DECISIS*? / How Much "Raw Judicial Power," Anyway? / "Prayer" to Civil Courts? / If Judges Do Not Apply the Law, Who

Will? / Why Brief Rooker Feldman Cases if Dismissal is Automatic? / and Miscellaneous. He also renewed motions for disqualification of judges and production of state court documents.

19. On May 31, 2000 the appellate panel denied a "petition for rehearing" and the motions without explanation or mentioning the en banc request. 10a.

20. On June 8, 2000 Wendt filed a motion to vacate or at least correct the order, or at least thought he did, again arguing ultra vires action, also arbitrary denial of en banc consideration. He also addressed a letter to the Chief Judge regarding en banc consideration. The next day Wendt received the mandate in the mail and on June 12, 2000 received the unfiled motion and letter in the mail, with a note that only a motion to recall the mandate would be considered. On June 13, 2000 he filed a motion to recall and stay the mandate, appending the previous unfiled motion as reasons. On July 10, 2000 it was denied without explanation. 11a.

21. The reply brief appended an article from a recent UIC publication about its plans for Maxwell St., including assets purchased with the appropriation in question, without the slightest reference to this litigation. The petition for rehearing en banc noted major construction activity on these assets. UIC has since opened an office for sales of residences located on these assets, with Mazola as an agent, never mind that this litigation could require their reversal. A federal action by a different party to halt now ongoing demolitions, pending historic designation, was rejected for little liklihood of success.

REASONS FOR GRANTING THE WRIT

"REJECTING" AN UNMENTIONED ARGUMENT

22. Is there still any such thing as binding authority in the federal courts, if courts can simply "reject" an argument without even mentioning, much less rebutting it? No matter its quotations of Supreme Court decisions and legislative intent regarding constitutional protections? Is there, then, still a right to

sue that means anything more than a right to howl at the moon? Has Dred Scott v. Sandford, 60 U.S. (19 How.) 393, been resurrected in reverse, if there is no right to sue, there are no rights that need to be respected? What about Marbury v. Madison, 1 Cranch. 137, 177, 178-179, that if the courts do not rule on constitutional questions, there is no constitution? If a witness' refusal to answer questions is an attack on the judicial system, then what is a judicial refusal to answer questions? Is a lawsuit anything more than a quest for the judges' favor, if it can be dismissed on *"lex non scripta,"* as in this matter? Originally posed about state court proceedings, these questions now have to be asked of the federal court decisions as well.

23. The appellate order of May 4, 2000, 1a-4a, presumes to uphold the trial court dismissal without even mentioning, much less addressing, Wendt's arguments that *Rooker Feldman* is not an automatic jurisdictional bar, certainly not in the present circumstances, and that the Civil Rights Acts of 1866 and 1871 confered jurisdiction. It even approved, not once but twice, of the trial court having done this already. The argument is simply disregarded as *"a long-winded narrative assault"* on the state court judgments. There is no hint of it beyond the furtive, ambiguous reference to *"the state courts' refusal to address his case on the merits."*

24. Both federal courts simply stonewall Rooker and Feldman away, the appellate court Congressional intent as well. After two trial court orders and two appellate orders one might gather that these passages have gone down some worm-hole in space time, that they are as far removed from normal discourse as the Roswell crash or the face in Cydonia. An Arizona attorney on late night radio, suing for government records on black triangle UFOs, seems to be having an easier time than Wendt in getting an application of these quite obvious passages, ¶¶29-42, to quite undisputable facts, already in the record, 14a-18a. To simply ignore binding

authority is nothing but "*...a mere illegal fiating,*" Manufacturers Record Pub. Co. v. Lauer, 268 F.2d 187, 191, or an exercise of *"raw judicial power,"* White, dissenting, Roe v. Wade, 410 U.S. 113, 222.

25. What do stare decisis and binding authority mean if courts can simply ignore and "reject" plainly cited higher authority? The doctrine of *stare decisis* exists in large part to limit the "proclivities" of indivivuals and thus bolster the integrity of the court. Vasquez v. Hillery, 474 U.S. 254, 265-266. Likewise, Charles Rembar, The Law of the Land, p53, said stare decisis is an anti-corruption device, that binding courts by external rules makes favoritism awkward. *"A system in which he was bound only to achieve a 'just result' would be a breeze for the crooked judge. There are considerations, he would tell you, that are not immediately apparent; one must not be too technical."* In Blackstone's Commentaries, Vol. I, p69, *stare decisis* bound the courts by a permanent rule, *"being sworn to determine, not according to his private judgment, ...not delegated to pronounce a new law, but to maintain and expound the old one..."*

26. What, then, in this case, so far, cannot be simply ascribed to "proclivities"? If the respondents, their counsel, and both federal courts were indeed a bunch of crooks conspiring to flim-flam Wendt's case out of court, what would they do any differently in public than what they have already? What is there anything in any of their pleadings or rulings that would inhibit the "proclivities" of a little inside crowd to run presumably public processes as private fiefdoms?

27. The "ostrich instruction" case, United States v. Ramsey, 785 F.2d 184, that criminal intent can be inferred from deliberate disregard, applies to the utter hypocrites and ostriches of the appellate panel. While, on the one hand, their order is based upon stifling inquiry into a state court decision, never mind the actual language of Rooker and Feldman, on the other hand, Ramsey at 189, issued by two members of the very same

panel, one the author, said inquiry into relevant considerations is essential, that *"...we call the omission to investigate criminal recklessness..."*

28. Sparf v. United States, 156 U.S. 51, concluded at 107 that if judges are obliged to publicly give reasons for their decisions, there is little danger of injustice in requiring juries to apply the law as given by the judge. But if the courts do not give their reasons and thus decide cases arbitrarily, without the proper consideration demanded by due process of law, then where is the protection against oppression? Or anything else? Furthermore, if the judges do not apply the law, in particular when their brethren are being sued, then why should jurors take it any more seriously when their simpaticoes are in the dock?

IS A HYPOTHETICAL JURISDICTIONAL BAR ANY JURISDICTIONAL BAR?

29. *Rooker-Feldman! Rooker-Feldman! Rooker-Feldman!* Everyone hollers *"Rooker-Feldman"* but who has actually read Rooker? Or Feldman? Are state court decisions beyond any inquiry of the lower federal courts? Or do Rooker and Feldman both impose qualifications on state court proceedings, qualifications necessary to maintain basic protection of law? Rooker v. Fidelity Trust Co., 263 U.S. 413, 415, 416 held:

"It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject matter and the parties; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs, 191 Ind. 141. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so

reversed or modified, it would be an effective and conclusive adjudication..."

"Some parts of the bill speak of the judgment as given without jurisdiction and absolutely void; but this is merely mistaken characterization. A reading of the entire bill shows indubitably that there was full jurisdiction in the state courts and that the bill at best is merely an attempt to get rid of the judgment for alleged errors of law committed in the exercise of that jurisdiction."

30. Rooker, 415, cited Voorhees v. The Bank of the United States, 10 Pet. 449, which held at 474,

"The line which separates error in judgment from usurpation of power is very definite; and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally... In the one case, it is a record importing absolute verity; in the other, mere waste paper..."

31. Rooker thus set standards for state court judgments. If they are inviolate, beyond inquiry, then why the standards? Why the distinction between absolute verities and waste paper? The courts and respondents both have said some pretty ridiculous things, but even they have not had the sheer gall to say that the state court decision(s) in question actually complies with Rooker, as

1) having a ruling within the court's jurisdiction,

2) being based on a full and fair hearing (except Madigan, if unsupported), OR,

3) being responsive to the issues, much less "and," that is, of course, unless the judicial process is too politicized to give reasons any more, *"...Plaintiff's claim was addressed and dismissed in State Court..."*

32. In context, in trial court the respondents only damned the judicial process with faint definition,

"... Based on Plaintiff's failure to provide sufficient facts to support a cause of action against any of the named defendants, his claim was dismissed and the circuit court's dismissal was affirmed on appeal..."

"By dismissing Plaintiff's claim, based on his own admissions, the Cook County Circuit Judge issued a ruling in his case. Plaintiff's claim was addressed and dismissed in State Court. Such dismissal constitutes a judgment or ruling. Plaintiff's displeasure with the outcome hardly renders the State Court action as nonjudicial."

33. Who has actually read Feldman, the oft-cited footnote restated by Justice Marshall, concurring in Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 25:

"As we have said, '[i]f the constitutional claims presented to a United States district court are inextricably intertwined' with the merits of a judgment rendered in state court, 'then the district court is in essence being called upon to review the state-court decision. This the district court may not do. District of Columbia Court of Appeals v. Feldman, (460 U.S. 462) 483-484, n16..."

34. "Inextricably intertwined" with what merits? Illinois law, cited by the respondents themselves, presumes some merits. Towns v. Yellow Cab Co., 73 Ill. 2d 113, 119, 382 N.E. 2d 1217. The respondents' reply of June 17, 1999 admits to no ruling on the constitutional issues. Not only do they leave the factual tampering of the appellate case unmentioned (below), but neither appellate nor trial decisions specify what it takes to make out a case for lack of notification and neither specifies where the allegations fall short. Both make the "conclusory" allegation, however, that Wendt could not allege sufficient facts. Where has court or counsel ever said anything vaguely resembling, *"To make out a case for lack of notification, a plaintiff must allege A, B, C, and D. B and C are not alleged here. Therefore the complaint is insufficient."* Amazingly, they even said, *"Specifically, a court must ignore conclusions of law and fact which are not supported by allegations of specific facts upon which the conclusions rest."* Misselhorn v. Doyle, *257 Ill. App. 3d 983, 985.* (What must one allege, incidentally, to make out a case for lack of notification? Just that, a fact even the decision notes, 18a. The other

side even has the burden of proving notification. 66 CJS 474-476, Notice §35, 36; 28A ILP 470, Notices §9.)

35. How about *Prentis-Rooker-Feldman? Prentis,* as in Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, Feldman, 460 U.S. at 477:

"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist..."

36. Where, pray tell, does either state court decision apply law to the facts? This is the sum and substance of the judicial process, but neither court not the other side has yet had the gall to say either decision applies law to facts. *"We went on to suggest that the nature of a proceeding 'depends not upon the character of the body but upon the character of the proceedings.' (citations)"* Feldman, 460 U.S. at 477. Not applying law to the facts, the decisions are nonjudicial, thus not reserved as judicial for review by the Supreme Court of the United States, Feldman, 460 U.S. at 482-483, 486.

37. Rooker, 415, refered to *"authoritative and conclusive"* state litigation. What can possibly be said for the state court decision here? Far from ruling on the questions presented, in particular, 28a-36a, ¶¶5-18, it denies outright that a case was even made, 18a, *"... it is neither defendants' nor this court's responsibility to research and argue a case for plaintiff."* Not that Wendt is asking a federal court to resolve a novel question of state law, but it is obvious there is a question that still deserves a cogent response. (What ever happened to *"authoritative and conclusive"* litigation, anyway? Even that scourge of relitgation, Homola v. McNamara, 59 F.3d 647, authored by a member of the appellate panel, has precious little to say about getting it right the first time. Thus litigation is a game and the system is flooded, if Wendt is not being too overly intrusive into "professional" matters with his "lay" perceptions.)

38. The state appellate decision, 18a, says, *"Plaintiff in fact attended the hearing."* Under Illinois law, 3 ILP 307, Appearance §6, appearance at a hearing

waives any defects in notification. As stated in ¶¶62, 67, 73(g) of the amended complaint, Wendt took immediate objection to this in the Petition for Rehearing and further objection in his Supreme Court pleadings. No response to this contention has yet been made by any court or opposing counsel, in state or federal court. 19a-25a is the very complaint that the state appellate court purportedly ruled upon. Where in that complaint is there the slightest basis for the damning statement that Wendt was at the hearing of which he was not notified? Indeed, ¶13, 22a, of the state complaint directly contradicts that notion. Kalina v. Fletcher, 522 U.S. 118 (1997), held a prosecutor liable for tampering with the factual premises of a case, on grounds that this was done as a witness and not as any prosecutorial function. By the same token, tampering with the factual premises of the case is not within the rule or rationale of *Rooker Feldman,* or, for that matter, judicial immunity. Courts do not have the power to decide hypothetical cases, much less turn real cases into hypothetical ones. Nor do appellate courts function as triers of fact or as parties submitting allegations. If courts can turn real cases into hypothetical cases with impunity, then no one has any real right to sue and no real rights that can be enforced.

39. Courts have solemn duties *"to say what the law is"* and to give effect to the constitution when necessary, or else we simply do not have a constitution. Marbury v. Madison, 1 Cranch. 137, 177, 178-179. Indeed, "juris" is Latin for law and "diction" obviously refers to speech. The rulings are null and void in that, besides the factual tampering, the court has no power to avoid a constitutional ruling when necessary to settle a case. A prerequsite to jurisdiction is a ruling within the power of the court. Cooper v. Reynolds, 10 Wall. 308, 316, 77 U.S. 308, 19 L.Ed. 931, National Malleable v. Goodlet, 105 F.2d 8, 15, Briley v. State of Cal., 564 F.2d 849, 857. Federal courts have long overturned null and void decisions, Davidson v. General Finance Corporation, 295 F. Supp. 878 (1956), and those procured by fraud, Browning

v. Navarro, 826 F.2d 335 (5th Cir., 1987), 345

40. When are the respondents ever going to speak for themselves? They admit to no law in the appellate decision, do not dispute its factual tampering, and have not specified any factual deficiencies, not that there are any under the law. No facts, no law, then what is there to the rulings? What binding force? What better case for ignoring their own conclusions? Why not declare it waste paper, null and void, and no bar to relitigation?

41. In any event, other than also damning the judicial process by faint definition, 6a, there is not the slightest hint in any federal order that the state court decisions comply with Rooker in that there was 1) an exercise of jurisdiction, 2) a full and fair hearing, and 3) a ruling responsive to the issues, nor the slightest hint of compliance with Feldman, in that law was applied to facts and the decision had merits. Under these circumstances, plus the following jurisdictional reassertion, McCarthy v. Madigan, 503 U.S. 140, 146, is already an "ostrich instruction" of sorts:

"...federal courts are vested with a 'virtually unflagging obligation' to exercise the jurisdiction given them. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817-818, 96 SCt 1236, 1246-1247, 47 LEd 483 (1976) 'We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given.' Cohens v. Virginia, 6 Wheat 264, 404, 5 LEd 257 (1821)"

42. The panel order's "Rooker Feldman doctrine" is thus a hypothetical jurisdictional bar. Turning a real case into a hypothetical case is a little explored point of law, but here is a golden opportunity to correct that. Steel Co. v. Citizens for a Better Environment, 118 SCt 1003, 1016, might produce an ostrich instruction of its own:

"... Hypothetical jurisdiction produces nothing more than a hypothetical judgment- which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning. Muskrat v. United States, 219

U.S. 346, 361, 31 SCt 250, 55 LEd 246 (1911); Hayburn's Case, 2 Dall. 409 (1792)... For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction is, by very definition, for a court to act ultra vires." (emphasis added)

JURISDICTION OVER CLOSED STATE COURTS

43. Is *Rooker Feldman* ready for Reconstruction? However inadvertantly, *Rooker Feldman* is closely congruent with Reconstruction intentions, in particular §3 of the Civil Rights Act of 1866. *Rooker Feldman* does impinge on federal-state relationships, a delicate, complicated area ever since the Slaughterhouse Cases, 83 U.S. (16 Wall) 36 (1873). If Slaughterhouse held that Reconstruction did not really change anything in federal-state relationships, more recent cases hold otherwise, notably College Sav. v. Florida Prepaid Post Secondary, 119 S.Ct. 2219, 2223, and Alden v. Maine, 119 S.Ct. 2240, 2267 (1999), both citing Fitzpatrick v. Bitzer, 427 U.S. 445 (1976).

44. Neither the lower federal courts nor the other side has addressed the responsiblities imposed both by *Rooker Feldman* and Reconstruction on state and federal courts. Orderly relations between state and federal courts is a delicate issue to be sure. Unlimited appeal of state court judgments to the federal system would indeed make state proceedings meaningless. If state proceedings are to be kept meaningful, however, they cannot be allowed to run amok altogether. If *Rooker Feldman* forbids appeal of valid state court judgments to federal trial courts, it nevertheless sets certain basic criteria for the validity of state court decisions. If there is no legislative authority for appeal of **valid** state court judgments except to the Supreme Court of the United States, there is plenty for dealing with **invalid** judgments under the Civil Rights Acts of 1866, 1870, and 1871. (42 U.S.C. 1981, 1983, 1985). The very language of the statutes refers to court proceedings. There is plenty legislative intent that the Reconstruction Statutes were designed to deal with closed courts.

45. Introducing the Civil Rights Act of 1866, Sen. Lyman Trumbull twice cited the Hoar incident as an example of evils to be corrected by federal intervention. **(S.p. 475, January 29, 1866,** Avins, ed., **The Reconstruction Amendment Debates (RAD), 122)**. It was customary in southern ports to detain free black seamen and prevent them from establishing any presence among the slaves. Hoar, a prominent Massachusetts attorney, had traveled to Charleston, South Carolina to institute legal action on their behalf, but had been unceremoniously run out of town. In a stirring speech on the reciprocity between protection by the government and the allegiance of the citizen, Rep. Broomall refered to the Hoar incident, before denouncing the failure of southern courts **(H.p.1263, March 8, 1866, RAD 175)**. After the veto Trumbull commented on federal actions in relation to state actions **(S.p.1759, April 4, 1866, RAD 199)**. Debating the 1871 act, Rep. Garfield said the Civil Rights Act of 1866 authorized lower federal courts to deal with closed state courts. **(H.p. app. 153, April 4, 1871, RAD 529)** Touching upon remedies under the act, Trumbull expressly left the fine points to the common law:

"The district courts of the United States, within their respective districts, are to have exclusively of the courts of the several States, cognizance ... concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce on the courts or judicial tribunals of the State or locality where they may be of any of the rights secured to them by the act..... The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States is to be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry it into effect: but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, and punish offenses against law, the common law, as modified and changed by the

constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern these courts in the trial and disposition of such cause..." **(S.p. 211, January 12, 1866, RAD 104)**

46. The debate over the Civil Rights (Ku Klux Klan) Act of 1871, eventually codified in part as 42 USC 1983, 1985, was largely concerned with criminal measures to deal with the massacres, murders, burnings and beatings then rampant in the South. Allusions to civil remedies for closed state courts notably included explicit description of original remedies in the federal courts by Sen. Frelinghuysen **(S.p. 501, April 6, 1871, RAD 542)** and two Representatives, Garfield and Coburn. Rep. Garfield **(H.p. app. 153, April 4, 1871, RAD 529)** also mentioned the same remedy arising under the Civil Rights Act of 1866. If grossly overestimating the quality of federal justice as applied in this case, Rep. Coburn did say:

"Obviously the court of justice is the first instrument to be used in aid of the fourteenth amendment; safer, milder, surer, more in accordance with reason, with our system, and with public sentiment. Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. In what other aspect does the power of the nation shine with more benignity? How much better this than the say of armed men, the suspension of civil process, the dread alternative of force!

"Can these means be made effectual? Can we thus suppress these wrongs? I will say we can but try. The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage... We believe that the officers of justice, shielded by the national power, will proceed promptly, without fear or favor, and that the trembling and tottering States will spring up and resume the long neglected administration of law in their own courts, giving, as they ought themselves, equal protection to all." **(H.p. 459, 460, April 4, 1871, RAD 534)**

47. Illinois is not ready for Reconstruction yet, but are the federal courts? It might be coincidence, but *Rooker Feldman,* fully considered, actually fulfills the mandate of the Civil Rights Act of 1899, §3, quite admirably. Does anyone else have reasonably simple, succinct criteria for distinguishing valid from invalid court procedings? That is, if they are applied. The cumulative panphlet, 27 FPD4th, has some thirty pages of headnotes short of the bankruptcy cases, under Courts key 509, *Vacating or annulling decisions,* and the 1998 volume of 57 FPD4th has some eighteen pages under Federal Courts key 1142, *Supreme Court, exclusive or concurrent jurisdiction,* both largely *Rooker Feldman* cases. *Rooker Feldman* obviously needs clarification, at least its implementation. Wendt has found only one case in which the court applied the so far ignored *Rooker Feldman* standards to a state case. Elks Nat. Foundation v. Weber, 942 F.2d 1480, 1484 held the jurisdictional bar called for an analysis *"whether an issue had been considered in the state courts,"* before concluding that the Montana case met the criteria.

48. *Rooker Feldman* is a two edged sword. So far the federal courts have only cut one way. The sword has to cut the other way, by imposing the Rooker standards of jurisdiction, full and fair hearing, and ruling responsive to the issues, and the Feldman standard of applying

law to facts, much as Rep. Coburn intended. *Rooker Feldman* is an affirmative defense, one that imposes burdens of proof, in keeping with §3 of the Civil Rights Act of 1866. The lower federal courts have not only the power but a mandate to deal with invalid state court proceedings, not to take them as sacrosanct.

49. The respondents argued in trial court that 42 USC 1981 requires an allegation of racial discrimination. Wendt answered that the rights protected are fundamental, if sometimes also couched in terms of equality, and that the requirement does not seem to predate Agnew v. City of Compton, 239 F.2d 230 (1957). That slavery could exist without racial discrimination and that federal intervention is necessary to prevent it is best shown, perhaps, by the exchange between Sens. Trumbull and Edmunds. **(S.p. 693, April 14, 1871, RAD 561).**

REQUIREMENTS FOR RES JUDICATA?

50. Fayyumi v. City of Hickory Hills, 18 F. Supp. 2d 909, is a law review article of sorts on recent 7th Circuit *Rooker Feldman* cases and Illinois holdings on res judicata. At least for Wendt it clarified the notion of *"injury at the hands of the court,"* trial court order, July 2, 1999, 8a, as opposed to injury suffered out of court, *id.*, 913-916, even if he cannot quite see how the injury in *Rooker I,* 261 U.S. 114, was imposed by the court.

51. For all the fine distinctions between *Rooker Feldman* and res judicata, *id.*, 917-918, both require a decision on the merits. Fayyumi, 918, directly cites Torcasso v. Standard Outdoor Sales, 157 Ill.2d 484, 490, that a decision on the merits is conclusive and constitutes the bar. For all the hypothetical commentary about res judicata in the panel order, 3a, neither the respondents nor the courts are quite so bold as to actually call the state decision a decision on the merits.

ELEVENTH AMENDMENT

52. The respondents claim judicial, prosecutorial, legislative, and sovereign (11th Amendment) immunities as if as if the King can do no wrong. If they prove

anything at all, it is that immunity promotes carelessness while liability promotes caution. Rabon v. Rowan Memorial Hospital Incorporated, 269 NC 1, 152 SE 2d 485, 493. Immunity, of course, only applies to personal damages, not to the declaratory and injunctive relief. Pulliam v. Allen, 466 U.S. 522, 528-543 (1984)

53. Recent cases hold that Reconstruction abrogated Eleventh Amendment immunities. College Sav. at 2223; Alden at 2267 (¶43). Commonwealth Edison v. Vega, 174 F.3d 870, cited hypothetically in the panel order, 4a, as an Eleventh Amendment defense, does not deal with any constitutional or Reconstruction issues. Also see Pennhurst State School & Hosp. v. Haldeman, 465 U.S. 89, 102, that challenges to the federal constitutionality of state actions do not invoke the bar.

STATE NOT A PERSON

54. The state is not a person, as that term is used in 42 USC 1983, joint brief, p21, citing Will v. Michigan Department of State Police, 491 U.S. 58, 71. Judging by the spirited dissents and the conflict with cases on Reconstruction incursions into 11th Amendment immunities, however, this Court might like to take it back. First, however, is a state or arm of a state before the Court? By ample Illinois case law cited in Wendt's much ignored state trial court Sur-Reply (also 44a), the State is not the State beyond constitutional limitations:

3. ...defendant U of I also cites Sass v. Kramer, 72 Ill. 2d 485. At 492 it makes the same point, that allegations of unconstitutionality do not create actions against the State. It also says that acts under an unconstitutional statute allow a suit to be maintained, one that is NOT an action against the State:

"While legal acts of of State officers are in effect acts of the State itself, illegal acts performed by the officers are not, and when a State officer performs illegally or purports to act under an unconstitutional act or under an authority which he does not have, a suit may be maintained against the officer and is not an action against the State of Illinois. (cites)"

4. Defendant U of I also cites Smith v. Jones, 113 Ill. 2d 126, which at 131-132 elaborates on the same point, emphasis added:

"... An action against a State official for conduct in his official capacity will ***withstand a motion to dismiss the complaint*** *on sovereign immunity grounds* ***if the complaint alleges*** *that the official is* ***enforcing an unconstitutional law*** *or violating a law of Illinois and thus acting beyond his authority. (cites) In these cases it is said that the action 'strips a State officer of his official status *** [and] his conduct is not then regarded as the conduct of the State, nor is the action against him considered an action against the State.' (cite)(Also see similar point in Healy v. Vaupel, 133 Ill.2d 295, 308, a case cited by defendants DANIELS and DIDRICKSEN.)*

55. As matters have devolved, however, the Illinois constitution is simply not in effect. Far from enforcing the limits of the Illinois constitution, the respondents have done everything to evade them. Thus the Illinois Constitution is in suspension, as is Illinois statehood, at least until Wendt's constitutional questions are resolved.

56. The respondents' conduct actually makes a case for federal seizure of the assets procured with the appropriation in question and any unspent funds. There is some slight irony that Maxwell Street, once [illegible]rated for sale of stolen goods (if also honored fitfully as the birthplace of former Justice Arthur Goldberg), is now being sold as a stolen good, unless this Court intervenes. In 1867 the federal Reconstruction Act was necessary to supplant missing state functions. Sometimes even this Court must initiate action to preserve its own effectiveness. United States v. Shipp, 214 U.S. 386, was a contempt proceeding against a sheriff for allowing a lynching of a prisoner whose case was before this Court. Otherwise the law has not advanced since the Enclosure Movements two centuries ago, antecedents of UIC taking over Maxwell St., which spawned the ditty,

"The law imprisons the man or woman/Who steals a goose from the common/But lets the greater felon loose/Who steals the common from the goose."
Or since John Locke wrote some three centuries ago, 2nd Treatise on Government, ¶176,

"... great robbers punish little ones to keep them in their obedience, but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world and have the power in their hands which should punish offenders..."

JUDICIAL IMMUNITY

57. The respondents invoke judicial immunity, but for a non-judicial act. It is plenty obvious, ¶¶35-41, they did not apply law to facts, the very essence of a judicial act. Judicial immunity applies only to judicial acts. The joint brief, p22, proclaims judicial action as what judges "normally" do, citing Mireles v. Waco, 502 U.S. 9, holding a judge's order to use excessive force is not in clear absence of jurisdiction. Unlike Pierson v. Ray, 386 U.S. 547, or most immunity cases, Mireles has no discussion of protection of the public. Judging by the dissents, the lower court opinion, and what the other side is making of it, it is another one this Court might like to have back. Any conscientious judge should take high umbrage at what the respondents pass off as "normal." As matters stand now, the judicial process is damned by faint definition, 6a. Does it deserve no better than, *"I know it when I see it."* (Stewart, concurring, Jacobellis v. Ohio, 378 U.S. 184, 197)?

58. Judicial immunity is a common law rule with an elaborate rationale, the principal consideration being protection of the public. As Wendt argued in his Motion for Reconsideration in the Supreme Court of Illinois:

22) As a common law rule, judicial immunity is subject to the principle of the common law that it is based on reason, that when the reason for a rule ceases, the rule ceases to have effect. Cessante ratione legis, cessat ipsa lex. *See extensive discussion of this point, Funk v. U.S., 290 U.S. 371, 385-386. It would be hard for*

the Illinois judges to invoke judicial immunity regarding their conduct in this case without saying, "We only make the rules. Other people follow them." *Next year being the 70th anniversary of Louis Brandeis' famous dissent, that when the government breaks the law, it invites everyman to break the law,* Olmstead v. United States, *277 U.S. 438, 485, the timing will be nothing short of exquisite.*

PROSECUTORIAL IMMUNITY

59. Respondent counsel are likewise beyond the rule and rationale of their immunity. Yelling and pounding on the table is that age-old lawyerly resort when the case is weak on law and facts both. Done on behalf of the ordinary schnook it is little more than an irritation and waste of time. Done on behalf of those prominent in political and legal circles, however, it has to be taken as some sort of subtle or implied threat. The prosecutorial respondents never presented a serious legal response to the plaintiff's constitutional arguments in state court, but only expressed the extreme displeasure of their politically potent clients.

60. The facts of their misconduct are easy enough to discern, being their own entries into the public record. Where is their Res Advocata? Where did any of them ever address the constitutional issues or public integrity or public participation? What public purpose is served by their prattle about *"no allegations of wrongdoing,"* or about *"personal notification,"* or about being *"diligent"* when that means you cannot believe a legislative committee when it promises notification of a hearing? Not addressing constitutional issues but still stridently demanding dismissal, they issued a less than subtle hint to a highly political judiciary to issue a decision without a rationale, to abandon its proper judicial function, an invitation it accepted.

61. It is the essence of the judicial process for each side to argue its merits over the other side's. Done properly, the judge or jury can select the more meritorious, do justice in the case, and serve society's larger

interests. What the respondents have argued, however, is, *"Don't even think about the merits of his case,"* an *"ostrich instruction"* (Ramsey, 188-191) in reverse, so to speak, in state and federal court both. That submerges legal merit under improper influence, does injustice, and threatens society's larger interests. For purposes of alleging or proving a conspiracy, that is the *"meeting of minds,"* if the court complies with such argument. The ensuing court order is the overt act.

62. Prosecutorial misconduct, like judicial misconduct, is a grave menace to society. Civil lawsuits cannot cope with every conceivable abuse of discretion, but where there is some bright line to separate abuse from proper function, then immunity has to be denied to the abuse. To confer immunity on the abuse reinforces the public menace and defeats any legitimate function of immunity. There are plenty bright lines here.

LEGISLATIVE IMMUNITY

63. What, exactly, are legislative acts? Is depriving the public of its voice at a public hearing by a false promise of notification a legislative act? Or lying to her fellow legislators not once but twice about everyone being notified? And to keep a *"done deal"* a done deal, because of agreements between the City and the university, as respondent Jones put it, prior to the legislative action in question? Is that the legislative independence Tenney v. Brandhove, 341 U.S. 367, sought to protect? Or quite the opposite? And perpetuating that wrong for years. as Madigan and Daniels have done? Is it still the legislative process without public participation, or with grossly manipulated public participation? Biblia Abierta v. Banks, a case cited by the other side, 129 F.2d 899, 903 (7th Cir. 1997), lists several protected legislative acts, but not this sort of thing.

64. First Amendment considerations are germane to the claim of rights to a public forum under the 13th and 14th Amendments. Stern v. U.S. Gypsum, 547 F.2d 1329, 1342-1346 (7th Cir.) cited Supreme Court cases suspending certain laws when they would have con-

flicted with public input to governmental bodies, notably United States v. Cruikshank, 92 U.S. 542, 552 (1875), that *"the right to petition is logically implicit in and fundamental to the very idea of republican government."* If the Sherman Act has to bow to the First Amendment, how much more so the common law doctrine of legislative immunity? Furthermore, discrimination on grounds of First Amendment expression is wholly unacceptable. Governmental forums have to be open to all regardless of speech content. Police Department of the City of Chicago v. Mosley, 408 U.S. 92, 96.

65. Whether or not Madigan, Jones and Daniels have any liability for the denial of notification of the hearing in question, their subsequent conduct to prevent resolution by impeding the course of justice in state court by counsel, Counts Thirty-Six to Thirty-Nine, is no part of any proper legislative function. Does anyone have to prove or even allege a meeting of minds between attorney and client? Salazar v. Wiley Trucking Co., 216 Ill. App. 3d 863, 872-873, 576 N.E.2d 552, 558, sets forth the basic, long-standing principle of law that a party is responsible for following his lawsuit and is accountable for counsel's misconduct. Also see U.S. v. 7108 W. Grand Ave., Chicago, Ill., 15 F.3d 632, 634, that *"... the errors and misconduct of an agent (attorney) redound to the detriment of the principal (client)..."*

66. Are the respondents ready for the Revolution yet? Not as that was described by Chief Justice Jay in Chisholm v. Georgia, 2 Dall. 419, 471, 1 LEd 440, 462-463:

"It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a Court of Justice or elsewhere. The system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and priveleges; it is easy to per-

ceive that such a sovereign could not be amenable to a Court of Justice, or subjected to judicial controul and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the Courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; at the Revolution, the sovereignty devolved on the people...'"

JUDGES DISQUALIFIED IN
ROOKER FELDMAN MATTERS

67. At the outset of the federal case Wendt moved for a judge from out of state on grounds that federal and state judges share a common social life, that many federal judges came from the state bench, and that the respondents include members of the Illinois Supreme Court, which issues Illinois law licenses. This was attacked by the respondents as "speculative" and denied by the court on that basis. Never mind that Wendt would have to invade the judges' privacy or otherwise be privy to inside information to show otherwise. What is Wendt supposed to do? Hire detectives to shadow federal judges, as one would an unfaithful spouse, to catch, perhaps, one having lunch at Trader Vic's with some of the respondents? Besides the expense and personal repugnancy, such a thing could get one in trouble under 18 USC 372, 1503 and 42 USC 1985(1). Never mind, either, Illinois cases on the ability of the law to deal with "speculative" dangers (such as contingent fee contracts for procurement of public policy, Crichfield v. Bermudez Paving Co., 174 Ill. 466, 51 N.E. 552) and the injustice of having to bear the burden of proof of secret proceedings (such as communication with a deliberating jury outside the presence of the parties, People v. Childs, 159 Ill.2d 217). Dyson v. Sposeep, 637 F. Supp. 616, 619, (ND

Ind, 1986), unwittingly admitted how close state and federal judiciaries are,

"This leaves as Mr. Dyson's sole remaining argument the novel proposition that former state judges cannot fairly determine federal claims against state judges. That argument is patently preposterous. The federal judiciary is peppered with former state judges..."

EN BANC CONSIDERATION ARBITRARILY DENIED

68. Although the petition for rehearing en banc was properly titled as such and was replete with questions of exceptional importance and decisional compliance, the order of May 31, 2000, 10a, says nothing about the en banc request or that 30 copies of the petition, filed by Wendt per 7th Circuit Rule 40(b), were properly distributed among members of the Court. The 7th Circuit practitioner's handbook, p115, says the order disposing of such a petition will reflect that a vote was taken among the members of the court and its result. That, obviously, was not done. At the very least, some mention of en banc consideration should have been made.

69. United States v. American-Foreign S.S. Corp., 363 U.S. 635, 689-690, described en banc consideration as useful to maintain the uniformity and integrity of appellate decisions and determining doctrinal trends. There are very definite questions of doctrine and integrity here.

70. Missouri v. Jenkins, 495 U.S. 33, 45-50, gave 8th Circuit handling of en banc consideration the benefit of the doubt, amidst general confusion on the matter. The 8th Circuit was incomparably more accomodating in that matter, however, than the 7th Circuit in this.

71. Western Pac. R. Corp. v. Western Pac. R. Co., 345 U.S. 247, remanded the case to the Ninth Circuit for mishandling a request for en banc consideration, holding at 266 it had turned a "deaf ear" to the request for a full bench. At 260-261, 267-268, it said,

"... The en banc power... is... a necessary and useful power- indeed too useful that we should ever permit a court to ignore the possibilities of its use in cases where its where its use might be appropriate.

...(C)ertain fundamental requirements should be observed by the Courts of Appeals. In the exercise of our 'general power to supervise the administration of justice in the federal courts,' the responsibility lies with this Court to define these requirements and insure their observance.

"... whatever the procedure which is adopted, it should be clearly explained, so that the court and litigants in the court may become thoroughly familiar with it; and further, whatever the procedure which is adopted, it should not prevent a litigant from suggesting... that his case is an appropriate one for the exercise of the power."

"PRAYER" TO CIVIL COURTS?

72. The panel order, 4a, refers to Wendt's "prayer for relief." Coerced prayer in public schools was declared unconstitutional in Engel v. Vitale, 370 U.S. 421. "Prayer" continues unabated in the courts, however, no matter that coercion is *"essential to the idea of a law."* Federalist 15. Wendt finds such *"prayer"* offensive to his personal religious sentiments, but his more immediate concern is the larger social effect between other senders and the receivers, an effect he sees all too clearly the sort of *"raw judicial power"* far too evident in this case. "Prayer" to civil courts might have been a rather harmless holdover from the Divine Right of Kings two centuries ago. Today, however, it invites to its recipients to act like Delphic oracles or little tin gods, as they have in this case. Jay M. Feinman, Law 101: Everything You Need to Know About the American Legal System, pp124, 125, succinctly describes an unwholesome change that indeed makes the practice dangerous in today's context:

"... More importantly, from the colonial era through the early days of the Republic, the jury was a lawmaking institution as well as a fact-finding body. Early Americans understood law to be something that resided in the customs and moral sense of the community; as members of the community, jurors had as much access to the law as the judges did..."

"...Moreover, we now believe that law is made by the legislature and the courts, not found in the community's values, so jurors are bound to apply the law that is given to them by the judge..."

73. Wendt has already taken a strenuous objection to "prayer" offered to the state trial court, in his much ignored motion for rehearing, 44a-46a, concluding with this passage from Thomas Paine's Common Sense, Part III:

"Every quiet method for peace hath been ineffectual. Our prayers have been rejected with disdain; and have tended to convince us that nothing flatters vanity or confirms obstinacy in kings more than repeated petitioning- and nothing hath contributed more than that very measure to make the kings of Europe absolute. Witness Denmark and Sweden. Wherefore, since nothing but blows will do, for God's sake let us come to a final separation, and not leave the next generation to be cutting throats under the violated unmeaning names of parent and child."

MANDATORY CERTIORARI?

74. A grant of certiorari is discretionary (28 U.S.C. 1254(1), Rule 10), as is en banc consideration. None of the cases on en banc consideration, however, dealt with the problem of voiding an ultra vires act, and there is apparently no such case on certiorari. To the extent that either is the only procedure that can void an ultra vires act by a court, in particular a hypothetical jurisdictional bar, it is mandatory, just as avoiding ultra vires action always is. An ultra vires act by a Court of Appeals is thus a constructive certification for purposes of 28 USC 1254(2). A remand with instructions for appropriate consideration of Wendt's jurisdictional claims would furthermore be modest relief, relief that could be granted without a full briefing in this Court.

75. There is a flip side to Brandeis' famous dissent, that when the government breaks the law, it invites everyman to break the law, Olmstead v. United States, 277 U.S. 438, 485, one that got lost in a jurisdic-

tional wrangle three decades ago, U.S. v. Sisson, 399 U.S. 267. Not to disparge jurisdictional wrangles, to be sure, but there are more fundamental considerations to making a legal system work. Rather than take this case under threat of a lawsuit for ultra vires action, although at this point Wendt feels at least a warning is necessary, this Court should take this case out of the sense of duty necessary for any legal system to function, especially so in the courts themselves:

"When the state through its laws seeks to override reasonable moral commitments it makes a dangerously uncharacteristic choice. The law grows from deposits of morality. Law and morality are, in turn, debtors and creditors of each other. The law cannot be adequately enforced by the courts alone, or by courts supported merely by the police and the military. The true secret of legal might lies in the habits of conscientious men disciplining themselves to obey the law they respect without the necessity of judicial and administrative orders. When the law treats a reasonable, conscientious act as a crime it subverts its own power. It invites civil disobedience. It impairs the very habits which nourish and preserve the law." U.S. v. Sisson, 297 F. Supp. 902, 910-911

CONCLUSION

Wherefore action by this Court is necessary, at the very least instructions to the lower courts to deal with the issues presented. An immediate remand to the trial court to impose a constructive trust on the assets, pending a restoration of state constitutional authority, would help preserve the Court's effectiveness.

William F. Wendt, Jr.
1651 Hubbard
Chicago, Illinois 60622
(312) 421-4862 (landlord)

APPENDIX

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UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53
United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
Submitted April 28, 2000*
Decided May 4, 2000

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. FRANK H. EASTERBROOK, *Circuit Judge*
Hon. KENNETH F. RIPPLE, *Circuit Judge*

No. 99-3409

WILLIAM F. WENDT, JR.,
Plaintiff-Appellant,

v.

UNIVERSITY OF ILLINOIS, et.al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Div.
No. 98 C 7226
James F. Holderman, *Judge.*

ORDER

William F. Wendt, Jr., appeals pro se the district court's order dismissing his amended complaint for lack of subject matter jurisdiction pursuant to Fed. R Civ. P. 12(b)(1). Mr. Wendt alleges that numerous defendants violated his rights through either: (1) their participation in a state legislative process that resulted in the expansion of the University of Illinois at Chicago (the "UIC") campus; or (2) their participation in his unsuccessful state court action attacking the propriety of the legislation. The district court dismissed the action on the ground that it lacked subject matter jurisdiction under the *Rooker Feldman* doctrine. The district court also denied Mr. Wendt's motion for reconsideration pursuant to Fed. R. Civ. P. 59(e) because it merely rehashed previously rejected arguments. We affirm.

*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34 (a)(2).

Mr. Wendt opposed the expansion of the UIC's campus into the Maxwell Street market area in the near southwest side of the City of Chicago. Mr. Wendt testified at state and local hearings to voice his opposition to proposed state legislation to help fund the expansion, but the appropriation of funds eventually passed. In 1995, Mr. Wendt sued in state court to challenge the appropriation and enjoin the expansion effort. Mr. Wendt alleged that the defendants (various participants in the legislative proceedings) failed to give proper notice to potential opponents of the proposed legislation and violated his constitutional right to peaceably assemble and petition for the redress of grievances. The state trial court dismissed the action for failure to state a claim, and the Illinois appellate court affirmed. The Illinois Supreme Court denied Mr. Wendt leave to appeal.

After losing in state court, Mr. Wendt commenced this suit in federal district court. In his amended complaint Wendt names the following defendants: (1) the defendants from his state court proceedings; (2) the University of Illinois and certain representatives; (3) the attorneys who represented the defendants in the state court proceedings; and (4) every judge involved with his state court proceedings (including the entire Illinois Supreme Court). Mr. Wendt's complaint essentially reasserts the allegations contained in the state court action, but also alleges that the defendants violated his constitutional rights through their participation in the state court proceeding. The crux of Mr. Wendt's new allegations is that the state courts failed to adequately address his claims. Mr. Wendt seeks: (1) a declaration invalidating the state court determination; (2) an injunction halting the appropriation of state funds; (3) an injunction ordering the state courts to rule on the merits of his case; and (4) monetary damages "as may be appropriate." The district court dismissed Mr. Wendt's amended complaint pursuant to Rule 12 (b)(1) on the ground that the court lacked subject matter jurisdiction under the *Rooker Feldman* doctrine. Mr. Wendt moved

for an order to alter or amend the judgment pursant to Rule 59(e), which the district court denied.

The *Rooker-Feldman* doctrine holds that inferior federal courts have no subject matter jurisdiction to review state court decisions. *See Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 416 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). The doctrine bars federal jurisdiction when the plaintiff alleges an injury caused by a state court judgment, or when the plaintiff's federal claims are "inextricably intertwined" with the state court determination. *Long v. Shorebank Development Corp.*, 182 F.3d 548, 554 (7th Cir. 1999). In determining whether the *Rooker Feldman* doctrine prohibits subject matter jurisdiction, the pivotal inquiry is whether Mr. Wendt seeks to set aside the state court judgment or presents a distinct, independent claim. *Remer v. Burlington Area School Distict,* 205 F.3d 990, 996 (7th Cir. 2000) (quotations and citations omitted).

There is a fine distinction between the application *Rooker-Feldman* and res judicata. If Mr. Wendt's complaint collaterally attacks the judgment of the state court case itself, then *Rooker-Feldman* bars subject matter jurisdiction. *See Nesses v. Shepard,* 68 F.3d 1003, 1004 (7th Cir. 1995). If, however, Mr. Wendt seeks to relitigate the matter and thus bypass the judgment in the state suit, the federal court has subject matter jurisdiction, but the doctrine of res judicata bars the suit. *Id.* Generally, if a federal plaintiff raises the same claims raised in state court, he must overcome res judicata because "the second complaint shows that the plaintiff wants to ignore rather than upset the judgment of the state tribunal." *Homola v. McNamara,,* 59 F.3d 647, 650 (7th Cir. 1995).

We agree with the district court's conclusion that it lacked subject matter jurisdiction over Mr. Wendt's complaint under *Rooker-Feldman.* Mr. Wendt's complaint does not seek to bypass the judgments of the state courts, but instead launches a long-winded, narrative assault on those judgments. Mr. Wendt

repeatedly alleges that the state courts (aided by the parties to the action and their counsel) failed to adequately address the constitutional issues raised in his complaint and that he was injured as a result. Mr. Wendt's prayer for relief resolves any doubt that the true motive for his claim is to redress an injury allegedly resulting from the state courts' refusal to address his case on the merits. Mr. Wendt specifically seeks declaratory and injunctive relief forcing the state courts to address his arguments. Such a request effectively asks the lower federal court to examine the state court decisions and overturn them- the exact result prohibited by *Rooker Feldman*. Because all of Mr. Wendt's claims are inextricably intertwined with his central attack on the state court judgments, they are outside federal subject matter jurisdiction.

Mr. Wendt is not saved by his additional allegations seeking monetary damages as a result of alleged civil rights violations. A plaintiff may not seek a reversal of a state court judgment by casting his allegations in the form of a civil rights action. *Ritter v. Ross,* 992 F.2d 750, 753 (7th Cir. 1993)

The defendants raise a number of other defenses that would subject Mr. Wendt's claims to dismissal For example, Mr. Wendt's claims for damages against the various state officials in their official capacities are barred by the Eleventh Amendment. *Commonwealth Edison v. Vega*, 174 F.3d 870, 871 (7th Cir.), *cert. denied* 120 S.Ct. 176 (1999) However, because the district court properly determined that it lacked subject matter jurisdiction over Mr. Wendt's suit, we need not examine such defenses. *Centres, Inc. v. Town of Bookfield. Wis.*, 148 F.3d 699, 703 (7th Cir. 1998).

We also conclude that the district court was correct in denying Mr. Wendt's Rule 59 motion because he did not raise anything new to justify reconsideration of the dismissal order.

Accordingly, the judgment of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

WILLIAM F. WENDT, Jr.,	) No.98C7226
v.	) Judge
UNIVERSITY OF ILLINOIS, et. al.,	) HOLDERMAN

(District Court order, August 18, 1999)

On July 2, 1999, this court entered an Order granting defendants' motions to dismiss plaintiff's amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1). In that Order, this court found that it was deprived of jurisdiction over plaintiff's amended complaint by the Rooker-Feldman doctrine. Plaintiff moves for this court to reconsider that Order under Federal Rule of Civil Procedure 59(e). For the following reasons, this court denies plaintiff's motion to reconsider.

This court may entertain a motion to reconsider the granting of defendants' motion to dismiss. As this court has repeatedly stated, however, this court's orders and opinions are not intended to serve as first drafts, subject to revision and reconsideration. Thus, in making a motion to reconsider, a party may not simply reiterate arguments that the court has already rejected. A motion for reconsideration allows for a correction of a court's order in circumstances where: (1) the court has misunderstood a party, (2) the court has made a decision outside the adversarial issues presented to the court by the parties, (3) the court has made an error of apprehension (not reasoning), (4) a significant change in the law has occurred, (5) significant new facts have been discovered. Russell v. Delco Remy Div., 51 F.3d 746, 747-748 (7th Cir. 1995)(citing Bank of Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191(7th Cir. 1990)). Motions to reconsider should not be used to introduce new theories for the first time or to rehash old

arguments. Caisse Nationale de Credit Agricole v. CBI Indus., Inc., 90 F.3d 1264, 1270 (7th Cir. 1996)

Plaintiff's motion to reconsider largely repeats arguments on the facts and law previously considered by this court in deciding the motions to dismiss. After reexamining the record as a whole, in a light most favorable to plaintiff, this court continues to find that it was deprived of jurisdiction over plaintiff's complaint because of the Rooker-Feldman doctrine. Since this court's July 2, 1999 decision, the Seventh Circuit has once again upheld the Rooker-Feldman doctrine. See Maple Lanes, Inc. v. Messer, 98-4158, 1999 WL 544627 (7th Cir. July 27, 1999). As the Seventh Circuit reiterated, "'the fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment.'" Id. (quoting Garry v. Geils, 82 F.3d 1362, 1365 (7th Cir. 1996)). The injury of which plaintiff complains-- no fair hearing and lack of a state court decision-- stems directly from the state court's decision to dismiss plaintiff's state court complaint. Plaintiff's argument that this court may still consider his complaint because this is a review of a state court's nonjudicial action is baseless. (Pl's brief at 3). The state court engaged in judicial action when it dismissed plaintiff's state court complaint because plaintiff failed to allege sufficient facts to state a claim. The state court also found that dismissal was proper because of his own admission of lack of wrongdoing by defendants. Consequently this court engaged in an appropriate review of plaintiff's amended complaint and the parties' arguments in concluding that the Rooker-Feldman doctrine precluded this court from exercising subject matter jurisdiction over plaintiff's complaint.

For these reasons, plaintiff's motion to reconsider the July 2, 1999 Order granting defendants' motion to dismiss is DENIED. If plaintiff wishes to appeal this dismissal, he may file a notice of appeal with this court within 30 days of the entry of judgment. FRAP 4(a)(4).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

WILLIAM F. WENDT, Jr., Plaintiff,	) No.98C7226
	) Judge
v.	) HOLDERMAN
	) Magistrate
UNIVERSITY OF ILLINOIS, et. al.,	) Judge
Defendants	) DENLOW

(District Court order, July 2, 1999)

Plaintiff William F. Wendt Jr. ("Wendt") filed a forty-six count amended complaint against defendants who can be classified into four different categories: (1) defendants that Wendt sued in a prior state court lawsuit, (2) the attorneys who represented the defendants in that prior state court lawsuit, (3) the judges who ruled in that prior state court lawsuit; and (4) the University of Illinois and certain representatives. Defendants have individually moved to dismiss Wendt's amended complaint under Federal Rules of Civil Procedure 12(b)(1) and 12 (b)(6). For the following reasons, defendants' motions to dismiss under Rule 12(b)(1) are granted.

In ruling on a motion to dismiss, the court must presume all of the well-pleaded allegations of the complaint to be true. Miree v. DeKalb County, 433 U. S. 25, 27 n.2, 97 S.Ct. 2490, 2492 n.2 (1977). The court must view those allegations in the light most favorable to the plaintiff. Gomez v. Illinois State Bd. of Educ., 811 F.2d 1030, 1039 (7th Cir. 1987). Dismissal under Rule 12(b)(6) is proper only if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957); see also Panares v. Liquid Carbonic Industries Corp., 74 F.3d 786, 791 (7th Cir. 1996).

Defendants argue that the Rooker-Feldman doctrine bars this court from analyzing the propriety of the Illinois Supreme Court orders. This court agrees. The basis of the Rooker-Feldman doctrine is that only the United States Supreme Court is authorized by Congress to review decisions by state courts, and the only decisions reviewable are those by the highest court of the state in which a decision could be had. Centres, Inc. v. Town of Bookfield, Wis., 148 F.3d 699, 701-702, (7th Cir. 1998); Van Harken v. City of Chicago, 103 F.3d 1346, 1349 (7th Cir.), cert. denied., 117 S.Ct. 1846 (1997). "[I]t would be grotesque to allow a disappointed state court litigant to pursue his appeal in federal court." Id. Rather, "[l]itigants who believe that a state judicial proceeding has violated their rights must appeal that decision through their state courts and then to the Supreme Court." Centres, Inc., 148 F.3d at 702 (citation omitted). In order to determine the applicability of the Rooker-Feldman doctrine, the fundamental question is whether the injury alleged by the federal court plaintiff resulted from the state court judgment itself or is distinct from the judgment. Garry v. Geils, 82 F.3d 1362, 1365 (7th Cir. 1996). If the injury alleged resulted from the judgment itself, the lower federal courts lack jurisdiction. Id. In addition, "a plaintiff may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action." Ritter v. Ross, 992 F.2d 750, 753 (7th Cir. 1993)

Wendt's amended complaint essentially boils down to allegations that the defendants conspired to deprive him of various asserted constitutional rights by enacting a particular piece of legislation, participating in the state court judicial process, and ultimately making the decision to dismiss his claims. In his request for relief, Wendt asks this court to overrule the state court determination, reinstate his state court case, and/or rule on the constitutional issues presented in his state court case. This is the exact type of action that is prohibited by the Rooker-Feldman doctrine. Therefore, because

Wendt's alleged injuries are derived from the judgment of the state court and Wendt asks this court to overrule the state court's decisions, the Rooker-Feldman doctrine deprives this court of jurisdiction.

Finally, some of the defendants have requested that this court impose sanctions on Wendt. At this point, this court is not inclined to impose sanctions on Wendt especially since he is a pro se plaintiff. It also does not appear that the defendants complied with all the requirements necessary for the imposition of sanctions under Federal Rule of Civil Procedure 11. Wendt, however, should be mindful of Rule 11 which allows for the imposition of sanctions for the filing of frivolous and harassing complaints. Sanctions may also be proper if a plaintiff "refuse[s] to accept defeat" by continuing to file baseless complaints. See Sato v. Plunkett, 154 F.R.D. 189, 190 (N.D. Ill. 1994)(Easterbrook, J., sitting by designation).

Accordingly, for the foregoing reasons, defendants' motions to dismiss are hereby GRANTED with prejudice. This case is dismissed in its entirety for lack of jurisdiction.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 31, 2000

Before

Hon. WILLIAM J. BAUER, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge
Hon. KENNETH F. RIPPLE, Circuit Judge

No. 99-3409

WILLIAM F. WENDT, JR.,

Plaintiff-Appellant

v.

UNIVERSITY OF ILLINOIS, et. al.

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 98 C 7226-- **James F. Holderman,** *Judge*

ORDER

Upon consideration of the Plaintiff-Appellant's petition for rehearing filed on May 18, 2000, the judges on the panel have voted to deny the petition. Accordingly,

It is ORDERED that the petition for rehearing is DENIED.

United States Court of Appeals ss
For the Seventh Circuit
Chicago, Illinois 60604

July 10, 2000

By the Court:

WILLIAM F. WENDT, JR., Plaintiff-Appellant,	]Appeal from the]United States District]Court for the
No. 99-3409	]Northern District of
v.	]Illinois, Eastern]Division
UNIVERSITY OF ILLINOIS, NORMAN JEDDELOH, JAMES STUKEL, U of I President, et.al.,	]]No. 98 C 7226]
Defendants-Appellees	]James F. Holderman] *Judge*

Upon consideration of the **MOTION TO RECALL AND STAY MANDATE,** filed on June 13, 2000 by the pro se appellant,

IT IS ORDERED that the motion is **DENIED.**

CONSTITUTIONAL PROVISIONS AND STATUTES

13th Amendment:

§1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§2. Congress shall have power to enforce this article by appropriate legislation.

14th Amendment, in pertinent part:

§1. ... No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 United States Code 1981(a), in pertinent part:

All persons within the jurisdiction of the United States shall have the same right in every State ... to sue ... and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens....

42 United States Code 1983, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 United States Code 1985 (2), (3), in pertinent part:

... or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State..., with intent to deny to any citizen the equal protection of the laws,

If two or more persons in any State... conspire... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State... from giving or securing all persons within such State... the equal protection of the laws...

... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privelege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occassioned by such injury or deprivation, against any one or more of the conspirators.

42 United States Code 1986, in pertinent part:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured... for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented, and such damages may be recovered in an action on the case, and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action....

THIRD DIVISION
April 27, 1997

No. 1-96-0853
IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WILLIAM F. WENDT, JR.,	) Appeal from the
	) Circuit Court of
Plaintiff-Appellant.	) Cook County
v.	)
UNIVERSITY OF ILLINOIS AT CHICAGO, JAMES STUKEL, President, STATE COMPTROLLER) LOLETA DIDRICKSEN, SPEAKER) Of The ILLINOIS HOUSE OF REPRESENTATIVES LEE DANIELS) and Former SPEAKER Of The ILLINOIS HOUSE OF REPRESENTATIVES) MICHAEL MADIGAN and ILL. Rep (6th) SHIRLEY JONES,	) No. 95 Ch 7877
	) Honorable
	) Thomas P. Durkin,
Defendants-Appellees.	) Judge Presiding

ORDER

Plaintiff William Wendt appeals pro se from the dismissal of his complaint with prejudice. He raises many issues but never specifically claims that the trial court erred in dismissing his complaint. Plaintiff's contentions on appeal are as follows: (1) leave to amend improperly denied; (2) the enrolled bill rule should not be available as a defense; (3) the legislative leadership committed constructive fraud in refusing to discuss lack of notice; 4) the enrolled bill rule should not be available as a defense when the defendants have offered a conflicting defense; (5) public notice is a substantive matter subject to judicial review; (6) lack of notice deprives plaintiff of substantive personal rights not governed by the enrolled bill rule; (7) separation of powers

bars court intervention and checks and balances requires it; (8) this is state action and not a political question; (9) the declaratory judgment act authorizes this action for its involvement with past and future constitutional conventions; and (10) the hearings in the trial court were fundamentally unfair.

On August 16, 1995, plaintiff filed a complaint for specific performance, injunctive relief, and declaratory judgment against the University of Illinois at Chicago (UIC), Chancellor James Stuckel, State Comptroller Loleta Didricksen, Speaker of the Illinois House Lee Daniels, former Speaker of the House Michael Madigan, and Representative Shirley Jones. The complaint alleged, inter alia, that plaintiff opposed the planned expansion of the UIC campus into the Maxwell Street market area and subsequent relocation of the market; that plaintiff and others, including the Maxwell Street Vendors Association (MSVA) travelled to Springfield on three separate occasions to express their opposition to the legislature; that on May 25, 1994, after speaking at a hearing, plaintiff was promised that he would be notified of a subcommittee hearing in Chicago; that he was not formally notified of the hearing; and that he heard about the June 15, 1994, meeting, which was held in Springfield, the day before "from a friend."

Plaintiff alleged that the meeting was attended by pro-expansion groups, only one vendor spoke, and plaintiff's agenda was not discussed. He would have "offered for legislative consideration [the] question [of] whether [the UIC] should be expanding in the first place and various alternatives as to how it could expand without displacing the market." Plaintiff travelled twice to Springfield thereafter, but was unsuccessful in his efforts to have the UIC expansion appropriation removed from the budget.

Plaintiff alleged that he has suffered the violation of his rights to: (1) be notified of the committee hearing under Article IV, Section 7(a) of the Illinois Constitution; (2) peaceably assemble and petition for redress of

grievances under the 1st and 14th Amendments to the United States Constitution and Article I, Section 5, of the Illinois Constitution; (3) consult for the common good and make known his opinions to his representatives under Article I, Section 5, of the Illinois Constitution; (4) a self-policing legislature; (5) not to be defrauded by the legislature; (6) a republican form of government under Article 4, Section 4, of the United States Constitution; and (7) a readily available and reasonably complete journal of the proceedings in question under Article IV, Section 7(b) of the Illinois Constitution.

For relief, plaintiff requested the following: (1) that the promised legislative hearing be held; (2) a declaration that the appropriation in question was not validly passed; (3) an injunction against disbursement of the appropriation and an order to retain the status quo; and (4) costs, compensatory and punitive damages.

Defendants Didrickson and Daniels moved to dismiss the complaint on the grounds that the circuit court had no subject matter jurisdiction due to the State's sovereign immunity and that the Court of Claims was the proper forum. Defendants UIC and Chancellor Stuckel filed special appearances and a motion to dismiss on the same grounds.

Plaintiff filed a combined response to each of the motions, contending that the Court of Claims was not the proper forum because it had refused to entertain complaints which challenged the validity legislative action. He further stated that Didricksen and Daniels were made parties only because they had the authority to "partially rectify the wrongs done by others..." He also denied that he had alleged any wrongdoing on the part of defendants UIC or Stuckel.

In replies to plaintiff's response, defendants maintained that plaintiff admitted that he had made no allegations of wrongdoing against any of them personally.

In a sur-reply, plaintiff asserted his original allegations against UIC were too narrow and that UIC

had receives stolen or fraudulently conveyed property and benefitted from others' wrongdoing. He also set forth some of the statutory duties of the State Comptroller, commented that Daniels had ignored him when he testified before the House Republican caucus, and stated that his demand for damages was an afterthought.

Shirley Jones subsequently filed her appearance and motion to dismiss, stating that plaintiff's complaint failed to state a cause of action, challenged legislation as passed in compliance with all the constitutional, statutory, and procedural requirements and that the signatures of the presiding officers on the bill constituted conclusive proof that the procedural requirements regarding passage of Public Act 88-551 had been met.

On the day of the hearing, December 19, 1995, plaintiff filed a written motion for leave to amend his complaint to add Senator James "Pate" Phillip as a defendant. The trial court refused to entertain the motion until it had disposed of the pending motions to dismiss. After hearing plaintiff's argument, the trial court stated that plaintiff had failed to state a cause of action against any of the named defendants and granted motions to dismiss under sections 2-615 and 2-619 of the Code of Civil Procedure. It also refused to consider plaintiff's attempt to retract his denials of defendants' wrongdoing. The court denied plaintiff leave to amend his complaint and dismissed it with prejudice, again noting that plaintiff had admitted that he had no specific facts which could support a claim of wrongdoing by any defendant.

Plaintiff filed a motion for a rehearing setting forth provisions of the "enrolled bill rule" and claiming that passage of the bill in question had violated its principles. The trial court denied the motion rehearing, stating that plaintiff had merely reasserted his previous argument. Plaintiff then brought this appeal.

A motion to dismiss brought pursuant to section 2-615 of the Code of Civil Procedure (725 ILCS 5/2-615 (West 1994)) attacks the legal sufficiency of the complaint. Boyd v. Travellers Insurance Co., 166 Ill.2d 188, 194 (1995).

Such a motion admits all well-pleaded facts and all reasonable inferences that can be gleaned therefrom, but does not admit conclusions of law unsupported by specific facts. Mt. Zion State Bank & Trust v. Consolidated Communications, Inc., 169 Ill.2d 110, 115 (1995). Pleadings are to be liberally construed, but the complaint must state a cause of action through allegations of facts. Hough v. Kalosek, 279 Ill.App.3d 855, 859 (1996). The gist of plaintiff's complaint was the propriety of the appropriation to UIC for expansion into the Maxwell Street market area, but plaintiff's only specific allegation of wrongdoing was that someone failed in his promise to give plaintiff notice of the June 15, 1994 hearing. Plaintiff in fact attended the hearing. Since the complaint is devoid of allegations against any of the named defendants, including the promise to give him notice, there are simply not enough facts to support any cause of action. Moreover, in his reply to defendants' motions to dismiss, plaintiff stated affirmatively that four of the six defendants had committed no wrongdoing, thus further demolishing whatever claim he might have had. Although defendants' briefs address the substance of the issues regarding the propriety of the UIC appropriation in a coherent manner despite plaintiff's failings, it is neither defendants' nor this court's responsibility to research and argue a case for plaintiff. Consultants & Administrators, Inc., v. Department of Insurance, 103 Ill.App.3d 920, 924 (1982).

Nor do we believe that plaintiff would have been able to amend his complaint to provide facts to support a cause of action against any of the defendants. His sole argument in later pleadings was that certain defendants had benefitted by the appropriation to UIC. This is simply inadequate.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

CAHILL, J., with COUSINS, P.J., and LEAVITT, J., concurring.

IN THE CIRCUIT COURT OF COOK COUNTY, ILL.
COUNTY DEPARTMENT, CHANCERY DIVISION

WILLIAM F. WENDT, JR., plaintiff,	)	
	)	
v.	)	
	)	
UNIVERSITY OF ILLINOIS AT CHICAGO, JAMES STUKEL, President, STATE COMPTROLLER LOLETA DIDRICKSEN, SPEAKER of the ILLINOIS HOUSE of REPRESENTATIVES LEE DANIELS, Former SPEAKER of the ILLINOIS HOUSE of REPRESENTATIVES MICHAEL MADIGAN, and ILLINOIS REP. SHIRLEY JONES (6th), defendants	)	No.

COMPLAINT FOR SPECIFIC PERFORMANCE,INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND OTHER RELIEF

The plaintiff, WILLIAM F. WENDT, JR., representing himself, complains of the defendants for specific performance, injunctive relief, declaratory judgment and other relief as follows:

1. The plaintiff is a natural born American citizen, a registered voter, an Illinois-taxpayer, and a frequent exerciser of his rights to free speech and assembly (but not a lawyer, which he has never, ever claimed to be, the frequent question notwithstanding).

2. The defendant UNIVERSITY OF ILLINOIS, JAMES STUKEL, President, is a state land grant university organized under state statute.

3. The defendant State Comptroller LOLETA DIDRICKSON is the state constitutional officer charged with assuring the propriety of state disbursements

4. The defendant Speaker of the House LEE DANIELS is presently the legislative officer charged with directing legislative policy and assuring the propriety of

legislative acts within the Illinois House of Representatives, as was the former Speaker MICHAEL MADIGAN during the events described below.

5. Illinois Rep. SHIRLEY JONES (6th) is the state representative who chaired and apparently scheduled a hearing on the appropriation in question without notifying the plaintiff or the party with which he had peaceably assembled for redress of grievances regarding that appropriation or apparently anyone else opposed to it.

6. The plaintiff has long been opposed to the expansion plans of the defendant UNIVERSITY OF ILLINOIS AT CHICAGO (UIC) into the historic Maxwell St. Market Area, going back some years before the events described below.

7. In pursuit of that opposition, three times in May 1994 he peaceably assembled in Springfield with the Maxwell St. Vendors Assn. (MSVA, not a party in this action, and, of course, not represented legally by the plaintiff) for redress of grievances against the appropriation for UIC expansion into and redevelopment of the area.

8. On May 25, 1994, the third time they were in Springfield that month, he was asked by MSVA to speak on its behalf at a pre-arranged hearing before the House Higher Education Committee, and took vigorous part in the discussion. Among other things, he complained, uncontradicted, of mercenary attitudes previously expressed by James Foerster, a UIC planner then present. UIC and City of Chicago representatives were also present and testifying

9. After a generally favorable reception from committee members, MSVA and the plaintiff were promised a hearing by a subcommittee in Chicago, with legislators having inspected the market area beforehand. The only unfavorable member was Rep. Shirley Jones (6th), who kept referring to the planned expansion as a "done deal." It was the expressed intention of the committee chair, Rep. Wyvetter Younge (114th), to "lock

up" the parties in a room and not let them emerge until an agreement had been reached.

10. Since the market area is in Jones' district, however, she was to chair the promised subcommittee hearing. She held it on June 15, not in Chicago, but in Springfield, and without notifying the plaintiff directly or indirectly via MSVA.

11. Plaintiff relied upon legislative authorities to notify him, via MSVA, of the hearing, as promised at the May 25 hearing, or to make other public notice. Late in the afternoon of June 14, 1994, however, he heard from a friend who had some contact with a rival vendors group that there was to be some sort of hearing on Maxwell St. the next morning in Springfield. He mentioned this at a meeting that evening of the MSVA steering committee, in preparation for the regular Wednesday membership meeting. No one knew anything about it. Two then MSVA officers went with him to the regular Tuesday 27th Ward meeting at 538 N. Western, chaired by then Ald. Dexter Watson, 27th, a vigorous market advocate. After the plaintiff addressed the group about the problem, phone contact was made with State Sen. Rickey Hendon, Watson's close political ally, who knew nothing about any hearing on UIC expansion Maxwell St. the next morning.

12. Extensive testimony at that hearing on June 15, 1994 was supplied by former Chicago alderman Ted Mazola (1st), the market's chief political enemy, an active real estate broker and developer in the immediate area, and a reputed political ally of Jones. Among other things, he said the vendors were being told the moving of the market was a "fait accompli," this well before the appropriation in question had been passed. Testimony at that same hearing purportedly on the market's behalf was supplied by a rival vendors' group, which fulsomely supported UIC expansion and accepted the inevitablity of the market moving, a position diametrically opposed to that of plaintiff and MSVA. The only testimony by anyone identified as a vendor was by one Alejandro Hernandez,

who spoke only in Spanish. The only testimony in English by this group came from one Delia Gamez, who identified herself as a translator and organizer, but who went considerably beyond his remarks. Her remarks only dealt with the problems of relocating vendors, not even mentioning any of the questions the plaintiff and MSVA wished to pose about UIC expansion in the first place.

13. There was an opening announcement from the chair, defendant Rep. SHIRLEY JONES, that all parties had been notified. A question was subsequently raised by a late arriving representative about notification, to which the chair reiterated the opening announcement. There were names read into the record of several non-vendors in attendance, all supporters of UIC expansion. There was no name read into the record of anyone substantially involved in MSVA affairs, and only the most fleeting mention of any opposition to that expansion. The name of one Jose Contreras, a legitimate, long-time vendor, quite fluent in English, and quite capable of articulating a position on behalf of vendors, was likewise read into the record, without his being asked to testify. The plaintiff understands Contreras had no idea that Delia Gamez was going to say what she did beforehand and that he found it quite objectionable. There was no announcement of any quorum being present and no vote taken on the question at hand.

14. Had the plaintiff not been irreparably harmed by the lack of notification and had he been present to testify, he would have offered for legislative consideration questions whether the defendant U of I should be expanding in the first place and various alternatives as to how it could expand without displacing the market. These matters, also of considerable public interest as well, have yet to be considered by the legislature.

15. With two days' notice MSVA could have had a busload of people in Springfield again, including the plaintiff. Neither the plaintiff nor MSVA, however, was ever notified of any hearing subsequent to May 25, 1994.

16. The plaintiff traveled to Springfield again with MSVA members on July 5 and July 11, 1994 to have the appropriation removed from the budget, but unsuccessfully.

17. The appropriation was passed, however illegally. The entirely predictable and irreparably harmful consequences have been that the old market was closed, a new, smaller market has opened, the old market area has been continually devastated by UIC demolition and reconstruction activity, and many vendors on the old market have had great difficulty making a living, as have many merchants in the Roosevelt/Halsted area. While some of these consequences might not be within the non-lawyer plaintiff's ability to litigate upon directly, which he is not trying to do here, they certainly are within his rights to pass upon within the legislative process, whose irregularities are exactly the principal subject of the present litigation.

18. In addition, various other events have transpired in the interim that also indicate a public interest in legislative reconsideration of UIC expansion policies. For instance, bearing especially on the question at hand, on October 17, 1994 UIC held a "Town Hall" meeting in a park fieldhouse near the campus. In attendance were approximately 100 residents of the nearby Barbara Jean Wright Courts and the CHA ABLA housing project, then UIC Chancellor James Stukel with about fifteen UIC staffers, the plaintiff, and various other neighborhood people. Also in attendance were at least two attendees at the June 15, 1994 hearing, James Foerster of UIC and Cornelius Goodwin of the Barbara Jean Wright Courts. Early in the meeting a staffer from the Chancellor's office explained the West Side Consortium, i.e., meetings held between UIC and various neighborhood agencies. Later in the meeting some of the residents complained they never heard from UIC. The Chancellor promised a newsletter. An ABLA resident complained he never heard from his Local Advisory Council. The plaintiff

then remarked as follows, roughly verbatim, without a word of contradiction from anyone present:

"Now listen, you folks, this is the first you have heard of the West Side Consortium, isn't it?

"You might like to know these people were going to City hearings last fall and last winter saying you want to get rid of the Maxwell St. market.

"Then (UIC Chancellor) Stukel goes to Springfield and tells the legislature you want to get rid of the market.

"Then they hold a hearing without telling us and it's a stolen appropriation."

19. Attached as Appendix "A" are excerpts of front page stories in UIC NEWS, August 24, 1994, the UIC administration paper, both proclaiming the passage by the General Assembly of the appropriation for UIC southward expansion, the same appropriation opposed by the plaintiff.

20. Attached as Appendix "B" is a note to the plaintiff of July 31, 1995 from John Daly, Director of the Illinois State Archives, indicating the lack of available records to show the legislative intent of the UIC southward expansion appropriation, confirming plaintiff's conversations with one of his staffers the previous week.

Applicable points of law:

A. Plaintiff has no adequate remedy at law.

B. The failure to notify the plaintiff, indirectly via MSVA or directly, of the hearing on June 15, 1994 or any other that may have been held in the matter subsequent to May 25, 1994 violates his rights:

1. To be notified of committee hearings as required under Art. IV, §7(a) of the Illinois Constitution,

2. To peaceably assemble and petition for redress of grievances under the 1st and 14th Amendments of the United States Constitution and Art. I §5 of the Illinois Constitution, plus, under the latter, to consult for the common good and make known his opinions to his representatives,

3. To a self-policing legislature, made justicable under Geja's Cafe v. Metropolitan Pier and Exposition Authority, 153 Ill.2d 239, 258-260,

4. Not to be defrauded by the legislature, and

5. To the republican form of government guaranteed by Art. 4, §4 of the United States Constitution.

C. His right is likewise violated to a readily available and reasonably complete journal of the proceedings in question, required under under Art. IV, §7(b) of the Illinois Constitution.

Specific performance, injunctive relief, declaratory judgment and other relief requested:

1. The legislative hearing in Chicago on UIC expansion as promised on May 25, 1994, but, to date, not delivered,

2. A declaration that the appropriation for UIC southward expansion was not validly passed,

3. Restraint upon the defendants from disbursing the purported appropriation or deriving other benefits therefrom or further disturbing the status quo until the legislature can properly pass upon the matter,

4. The costs of this action,

5. Compensatory and punitive damages to be determined, and

6. Such other relief as may be just and appropriate.

Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies the statements set forth in this instrument are true and correct, except as to matters stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true.

s / William F. Wendt, Jr.
Plaintiff, representing himself
1651 Hubbard
Chicago, Illinois 60622
(312) 421-4862 (landlord)
(with two attachments)

IN THE CIRCUIT COURT OF COOK COUNTY, ILL.
COUNTY DEPARTMENT- CHANCERY DIVISION

WILLIAM F. WENDT, JR., plaintiff
v. No. 95 Ch 7877
UNIVERSITY OF ILLINOIS,
JAMES STUKEL, President,
STATE COMPTROLLER LOLETA DIDRICKSEN,
SPEAKER of the ILLINOIS HOUSE of
REPRESENTATIVES LEE DANIELS,
Former SPEAKER of the ILLINOIS HOUSE of
REPRESENTATIVES MICHAEL MADIGAN,
ILLINOIS REP. SHIRLEY JONES (6th), defendants

MOTION FOR REHEARING

NOW comes the plaintiff, WILLIAM F. WENDT, JR., and moves under 735 ILCS 5/2-1203 for rehearing of this Court's dismissal of this action on December 19, 1995 and denial of leave to amend the complaint. In support he offers as follows:

ABANDONMENT IN COURT OF
ENROLLED BILL RULE

1. The buck stops here, said former President Harry S Truman. The buck stops in the Court of Claims, on the contrary, say defendants DANIELS and MADIGAN. As present and former Speakers of the Illinois House of Representatives, they have or had as their most constitutionally profound responsibility the certification of bills passing the legislature as having met all procedural requirements. Art. 4, §8(d), Illinois Constitution (the enrolled bill rule provision); Fuehrmeyer v. City of Chicago, 57 Ill.2d 193, 198. The sum and substance of this action is legislative misconduct. There is here no other cause of action other than legislative misconduct in the passage of an appropriation. Taking the position that this is an action against the State, however, one that belongs in the Court of Claims, they have both attempted to delegate this very same responsibility, one that cannot be delegated. Even to

suggest such a thing shows they have no real idea what their responsibility is. Thus they cannot be enforcing the enrolled bill rule and have rendered it a dead letter. They have in so doing likewise abandoned their most solid defense and have made this, if for no other reason, a justicable matter. They have also made it unnecessary for the Court to inquire into the internal affairs of the legislature to see that the enrolled bill rule is not in full, proper effect.

AMENDMENT WRONGLY DENIED

2. As mentioned in the motion to amend the complaint, Senate President James "Pate" Phillip should have been added as a defendant and paragraph 16 of the complaint should have these additional allegations, regarding the July 5 & 11, 1994 trips to Springfield by the plaintiff and his fellow peaceful assemblers:

"They were, however, quickly advised by sympathetic legislators to contact the legislative leadership, that ordinary legislators could do little at that late stage of legislative proceedings. They approached defendant MADIGAN'S office, but never got past the receptionist. They likewise reported to Senate President James "Pate" Phillips' office and sat there for approximately a half hour, while Phillips walked by without acknowledging their presence. The plaintiff and others were informed of a House Republican caucus meeting, where they gave testimony at some length on their situation, in the presence of defendant DANIELS, then the minority leader. Informed of the governor's power of amendatory veto, they approached the governor's office. Aides of the governor informed them an amendatory veto was highly unlikely. The plaintiff has no recollection of the self-policing responsibility of the legislature being mentioned at any time by anyone on either occasion."

3. As shown below, the enrolled bill rule has two lines of defense against legislation being passed improperly. First, the presiding officers have to affix their signatures to the bill to certify that it was passed

properly. Second, in the highly unlikely event they did or allowed anything improper, the rest of the legislature *"would certainly take care of them."* The amendment is needed to complete the theory of this case, first, that the legislation was improperly passed for lack of notification of the hearing, as required by Art. IV, §7(a) of the Illinois Constitution, and, second, that both lines of defense intended under the enrolled bill rule failed.

4. A case cited by this Court in denying leave to amend, Bowe v. Abbot Labratories, 240 Ill. App. 3d 382, also held at 389-390: *"Amendment should be liberally allowed to permit parties to fully present their causes of action...[a] trial court's power to allow amendments should be freely exercised in order that the litigants may fully present their causes of action."* The plaintiff's case is certainly not complete without showing the failure of the two lines of defense intended under the enrolled bill rule and providing a factual basis for the following legal argument. Therefore the amendment should have been allowed.

ABANDONMENT IN LEGISLATURE
OF ENROLLED RULE BILL

5. In order to avoid technical, wasteful litigation over the validity of the passage of legislation, the 1970 convention abandoned the "journal entry" rule for the "enrolled bill" rule. The difference between the two was explained at 6 Record of Proceedings, Sixth Illinois Constitutional Convention (Proceedings) 1386-1387 (Majority Report, Committee Report on Legislative Article, with apparently no dissent on this particular point):

"The 'journal entry' rule means that a piece of legislation can be challenged in the courts by pointing to a defect in its passage as reflected in the journal. Under this rule, a statute duely (sic) passed by the General Assembly and signed by the Governor may be attacked in the courts, not necessarily on its merits, but on some procedural error or technicality found in the legislative

process. The 'journal entry' rule, as a result, leads to complex litigation over procedures and technicalities.

"The 'enrolled bill' rule would provide that when the presiding officers of the two houses sign a bill, their signatures become conclusive proof that all constitutional procedures have been properly followed. The 'enrolled bill' rule would not permit a challenge to a bill on procedural or technical grounds regarding the manner of passage if the bill showed on its face that it was properly passed. Signatures by the presiding officers would, of course, constitute proof that proper procedures were followed.

"For a thorough discussion of the constitutional and legal problems associated with the existing 'journal entry' rule, see: Braden and Cohn, The Illinois Constitution, pp153-154, 157-158, and 159-160."

(Also cited at greater length in Benjamin v. Devon Bank, 68 Ill.2d 142, 145-146; Polich v. Chicago School Finance Authority, 79 Ill. 2d 188, 211; Geja's Cafe v. Metropolitan Pier and Exposition Authority, 153 Ill. 2d 239, 259-260)

6. The enrolled bill rule is not quite, however, an unconditional grant of power to the presiding officers of the legislature. The possibility of abuse was anticipated and countered in the convention's deliberations. Mr. George Lewis, chairman of the Committee on the Legislature, further anticipated, not once, but twice, that the legislature would correct any abuses:

"MR. LEWIS: ...As to the bills being signed, the present requirement is that both- or the leader of both houses sign the bill; but the present rule is what is called the journal entry rule, which means that the Journal is referred to by the court to determine if all the procedural requirements of passing a bill have been met. If the Journal says the requirements have been met, then the law is valid and cannot be attacked procedurally; but the Journal, of course, oftentimes does not actually tell or reflect what actually occurred. It may say it was read in full three times, when in fact it may have been only read by title. We have determined that the journal-entry rule is

one that causes a lot of unnecessary litigation; it's one that resort to the Journal itself should not be necessary; and that laws should not be overruled or set aside solely because of procedural error that may be found in the Journal. So we have transferred from the journal-entry rule- or we would propose to- to what is called the enrolled-bill rule, which means that when signed by both leaders- the leader of each house- only two people- that at that point, the procedural requirements are deemed to have been met, and the enrolled bill rule, then, is found in the last words, 'The president of the senate and the speaker of the House of Representatives certify that the procedural requirements for passage have been met,' and the only thing the court can then test would be the signature of the two men. Once the signature of those two men is there, then it is conclusively presumed to be the law.

"You may ask, 'Well, what would happen if there is some conspiracy between the two to sign a bill that was not in fact enacted?' And we believe that that simply could not and will not happen- that both houses would be so abhorred by that kind of tactic that that simply could not happen in a body of the Illinois General Assembly. Other states have this; they have had no problem with it. It has cut down the unnecessary litigation and the cost of court cases that have gone up on frivolous matters...." 4 Proceedings 2700

"MR. LEWIS: ... Delegate Mathias, we went into this whole matter very carefully, and we were advised- again, by a long series of people who testified- that there was a long series of cases testing, for rather ridiculous grounds, the validity of legislation. It has caused a waste of defense for the state of Illinois and also a problem as to when is the law law, and so we weighed that with the other problem of this matter of whether the two sign, and we determined, in accordance with many other states that have adopted the enrolled bill rule and have found no difficulties, that on behalf of that rule, the two, if they were to commit any fraud or chicanery, the legislature

would certainly take care of them. And we also realized that any bill could be changed again if there was to be any problem- we now have the annual sessions- that the legislature could devote itself to either repealing anything that was done or passing it, if what you say were to occur like the Lewis case.

"So we were cognizant of that, Delegate Mathias, and the committee felt that in compliance with the evidence that we heard that we were on very safe ground to adopt the enrolled bill rule." 4 Proceedings 2881

7. What has happened in the present matter, however, is just what Mr. Lewis said could not happen. The presiding officers and legislature at large failed to correct or even make any effort to correct an obvious and gross violation of constitutional requirements, one defeating major constitutional purposes, as shown below. What happened is something quite outside the intentions of the framers and thus not subject to the rule they proposed and which was subsequently adopted. Other states may not have had any trouble with it, but, obviously, Illinois has. See, too, Justice Heiple's dissent in People v. Dunigan, 165 Ill.2d 235, 256, on the pitfalls of literally reading the enrolled bill rule.

8. The present cause of action is something outside the legislative process as anticipated by the framers and certainly not some ridiculous technicality over which litigation should be discouraged. Just as the State must stay within constitutional limits to enjoy the protections of sovereign immunity, so must the legislative process. Just as the State is not really the State beyond constitutional limits, as shown in the controversy over motions to dismiss in this case, so must the legislative process stay within its constitutional limits to be the legislative process and enjoy the protections of the enrolled bill rule. That it has not. By way of analogy, Sass v. Kramer, 72 Ill. 2d 485 at 492 says that State officers have to stay within the Constitution and that allegations of unconstitutionality do not create actions against the State:

— *"While legal acts of of State officers are in effect acts of the State itself, illegal acts performed by the officers are not, and when a State officer performs illegally or purports to act under an unconstitutional act or under an authority which he does not have, a suit may be maintained against the officer and is not an action against the State of Illinois.* (cites)"

9. Contrary to the language of Geja's Cafe v. Metropolitan Pier and Exposition Authority, 153 Ill. 2d 239, 258-260, it is not up to the courts to abandon the enrolled bill rule. It is rather up to the legislature and in this instance it has.

FRAUDULENT OR INADVERTANT SIGNING

10. Notwithstanding the intent of the enrolled bill rule to eliminate litigation over the passage of legislation, it was indirectly recognized by the convention, nevertheless, that there might be a legitimate purpose in litigating over the passage of legislation:

"...It must be noted that the journal entry rule serves a real purpose only in case of either fraudulent or inadvertant signing of a bill by either the Speaker of the House or the Lieutenant Governor, or other presiding officer..." Braden and Cohn, The Illinois Constitution, p159, by reference at 6 Proceedings 1387

11. The refusal of the presiding officers to even listen to the plaintiff and his fellow peaceful assemblers as alleged in the proposed amendment, their fiduciary responsibilities as public officials notwithstanding, would amount to at least constructive fraud, 37 Am Jur 2d 23, 24, Fraud and Deceit §4:

"Constructive fraud is defined as an act done or omitted which amounts to positive fraud, or is construed as a fraud by the court because of its detrimental effect upon public interests and public or private confidence, even though the act is not done or omitted with an actual design to perpetrate positive fraud or injury upon other persons. Constructive fraud, sometimes called legal fraud, is nevertheless fraud, although it rests upon presumption and less upon furtive intent than does

moral or actual fraud. It is presumed from the relation of the parties to a transaction or from the circumstances under which it takes place. The conscience is not necessarily affected by it. Indeed, it has been said that it generally involves a mere mistake of fact. It requires neither actual dishonesty nor intent to deceive, being a breach of legal or equitable duty which, irrespective of the moral guilt of the wrongdoer, the law declares fraudulent because of its tendency to deceive others, to injure public interests, or to violate public or private confidence. Hence, the terms 'constructive fraud' and 'legal fraud' both connote that in certain circumstances one may be charged with the consequences of his words and acts, as though he has spoken or acted fraudulently, although, properly speaking, his conduct does not merit this opprobrium."

"... courts of equity may grant relief on the ground of constructive fraud such as would not authorize relief by way of an action of deceit at law."

RELATIVE IMPORTANCE OF
CONSTITUTIONAL PROVISIONS

12. At least six decisions of the Supreme Court of Illinois have declined to invalidate legislation challenged for failure to read the bills three times as required under the 1970 constitution, People v. Dunigan, 165 Ill. 2d 235 being the most recent. (Fuehrmeyer; Benjamin; Polich; Geja's Cafe; Cutinello v. Whitley, 151 Ill. 2d 409, 424) No other procedural requirement seems to have been litigated. This requirement and changes from its predecessor were discussed at some length in the committee report, 6 Proceedings 1385, and at some length in the convention, 4 Proceedings 2700-2701, 2881-2885. It seems the rule originated in the last century to assist legislators unable to read, who would be unable to understand the bills unless they were read in full. Now that legislators were literate, however, it as no longer necessary to read more than the titles of the bills. To prevent undue haste in the legislative process, however,

it was still considered necessary to have readings on three separate calendar days.

13. Art 4, §7(a), under which this action arises, however, is considerably more important, even if it was barely mentioned in the convention itself. Mr. Kelley briefly reported the commitee reports on Art. 4, §7 (a) requiring notification of committee hearings, and Art. 4, §7(b) requiring a journal, noting they were non-controversial and there were no dissenting reports. 4 Proceedings 2694. Art. IV, §7(a), requiring notification, was voted in unanimously, without discussion, 4 Proceedings 2859. The relevant intentions of the framers were detailed more fully at 6 Proceedings 1376-1377 in the majority report:

"This proposed revision is entirely new. Its purpose is three-fold: 1) to give symbolic status to the importance of legislative committee work in the Constitution; (2) to encourage thorough committee hearings; and (3) to encourage citizen participation in the committee process.

"The proposed addition of a provision specifically on committees undergirds constitutionally the right of the General Assembly to create committees for the purpose of assisting in the conduct of its business. In legislative bodies, committee work increasingly acquires greater importance as our society becomes more complex. The only effective way a legislative body can function is through the proper utilization of committees which examine particular problem areas. Recognizing the significance of committee work, authors of the Model State Constitution also propose a provision on committees.

"An important requirement is mandated in this provision, namely that committees must give adequate public notice of not only their meetings but also of the subject matters to be considered at the meetings. This requirement hopefully would enhance and encourage public participation in the legislative committee process."

14. Here, then, are several fundamental constitutional purposes defeated by the cause of action in

this matter. The legislature itself cannot properly function without proper committee work, and that, in turn, requires public participation. The denial of public participation, completely deliberate to all outward appearances, is precisely the bone of contention in this matter. Unlike the wasteful, technical litigation the enrolled bill was designed to eliminate, one purpose of this action is to restore an indispensable feature of the legislative process.

15. Benjamin v. Devon Bank, 68 Ill. 2d 142, 146-147, lists five procedural requirements subject to the enrolled bill rule, none of which relate to the bone of contention here, notification of committee hearings. It also held that the "single subject" rule of Art. IV, §8(d) as neither procedural nor based upon legislative journals, and therefore not exempt from judicial review under the enrolled bill rule. Rock v. Thompson, 85 Ill. 2d 410, 419, held that a petition alleging an improper election and swearing of a Senate President alleged *"not merely procedural deficiencies, but substantive constitutional defects..."* subject to judicial review. In the convention itself, discussion of legislative procedural requirements, 4 Proceedings 2700-2701, 2878-2885, did not touch upon committee hearings at all, much less notification, while the three reading bill was discussed at some length, 4 Proceedings 2881-2885. Given the importance the convention attached to committee work and notification, then, notification is not a mere "procedural" matter exempt from judicial review, but a substantive matter subject to judicial review.

DEPRIVATION OF PLAINTIFF'S PERSONAL RIGHTS

16. Such legislative powers as in Art. 4, §7(c) for compulsion of witnesses have long been circumscribed in the courts under such constitutional limitations as the right not to incriminate oneself. Emspak v. United States, 349 U.S. 190, Watkins v. United States, 354 U.S. 178, United States v. Haldeman, 181 U.S. App. D.C. 254, 559 F.2d 31, cert. den. 431 U.S. 933. Apparently the leading Illinois case on the subject, Murphy v. Collins, 20 Ill.

App. 3d 181, extensively discussed and upheld the right of an individual not to be brought before an unauthorized legislative committee.

17. The plaintiff's personal rights are also violated here, such as the rights to peacefully assemble, to petition for redress of grievances, and to inform public public officials under Art. I, §5 of the Illinois Constitution and the First Amendent. Notification of public hearings is often, and is here, a key element in the exercise of such rights, whether or not one has an absolute right to testify at such hearings. The exercise of such rights, as personal as they are, is furthermore an indispensable means of effecting peaceful change and maintaining the stability of society. Again, this is not a mere technical or "procedural" matter, nor anything merely found in the legislative journals, exempt from judicial review under the enrolled bill rule.

18. "*... yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens?*" asked James Madison in Federalist No. 10, in developing the basic American constitutional concept of the legislature and also creating a federal question. The validity of judicial determinations depends on the rights of due process being observed, including notification. The determination in question here was particularly judicial in character, a dispute over the use of a large tract of land. The plaintiff and his fellow peaceful assemblers were on one side, defendant U of I and its supporters on the other. Again, whether or not such a right can be considered absolute, it certainly is invidious discrimination and an abuse of discretion to invite one side to a hearing and not the other. In keeping the legislature less than fully informed, it also defeats the purposes of both §§7(a) and (c). How it can be defended as a legitimate or necessary legislative practice or employed for any reason except to manipulate the legislature is quite beyond the plaintiff.

SEPARATION OF POWERS
vs. CHECKS AND BALANCES

19. Its frustration over the failure of the legislature to police itself notwithstanding, Geja's Cafe at 260, the Supreme Court of Illinois in subsequent cases, Cutinello at 424, and Dunigan at 252, has still proved reluctant to intervene on the three reading issue, citing separation of powers. The much more substantive issues presented here, however, should invoke the doctrine of checks and balances instead. Rock v. Thompson, 85 Ill. 2d 410, 417-418, which ruled an election of a Senate President unconstitutional over strong dissent on separation of powers, held that separation of powers is not isolation of powers:

*"Since the decision in Field v. People (1839), 3 Ill. 79, the separation of powers principle has not been understood to mean a separation of functions between the three branches of government which is so 'distinct as to have no connection or dependence ***; but its true meaning, both in theory and practice, is, that the whole power of two or more of these departments shall not be lodged in the same hands, whether of one or many. That this is the sense in which this maxim was understood by the authors of our government, and those of the general and State governments, is evidenced by the Constitutions of all. In every one there is a theoretical or practical recognition of this maxim, and at the same time a blending and admixture of different powers. This admixture in practice, so far as to give each department a constitutional control over the other, is considered, by the wisest statesmen, as essential in a free government ***.' (3 Ill. 70, 83-84)"*

20. Fundamental constitutional reinforcement on separation of powers vs. checks and balances, regarding legislative issues in particular, might be gained from the Federalist Papers, in particular Nos. 47-51. The concerns are most serious and fundamental for the establishment and maintenance of republican government. The words

of James Madison in Federalist 47, on the importance of separation of powers, could hardly be more emphatic:

"...The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system..."

21. That separation, however, is far from the complete isolation of powers. Indeed, it cannot be, if there are to be likewise indispensable checks and balances. First and most basic is Madison's immortal statement in Federalist 51:

"...But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

22. Concentration of powers in the legislature was especially feared in the Federalist Papers. In No. 48 Madison quotes no less than Thomas Jefferson at length on legislative overstepping, worth reading in full, to be sure, but most pointedly, *"An ELECTIVE DESPOTISM was not the government we fought for...,"* original emphasis. Madison then summarizes findings of a special body to determine whether the Pennsylvania legislature had violated the constitution, saying in particularly pertinent part:

"A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of the legislature."

23. His conclusion regarding "parchment provisions" is particularly appropriate to the abuses possible under the enrolled bill rule, as noted in the dissent to Dunigan (above), which might actually compromise the separation of powers:

"The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands."

24. Liberally sprinkled in Federalist 47-51 is the same fear of a tyrannical majority that animated the classic No. 10. Carried to its logical conclusion, No. 51 shows the ultimate result, a complete breakdown of protection of law:

"...Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their situation, to submit to a government which may protect the weak as well as themselves, so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful...."

25. Legislative self-policing as anticipated by the enrolled bill rule is a concept alien to the Federalist

Papers. The expectation of the Illinois framers that the legislative membership would discipline the leadership would have sounded strange indeed to the federal framers two centuries ago:

"...Have republics in practice been less addicted to war than monarchies? Are not the former administered by MEN as well as the latter? Are there not aversions, predilections, rivalships, and desires of unjust acquisitions, that affect nations as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known that their determinations are often governed by a few individuals in whom they place confidence, and are, of course, liable to be tinctured by the passions and views of those individuals? ... Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries." No. 6

"... in all legislative assemblies, the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings. In the first place, the more numerous an assembly may be, of whatever characters composed, the greater is known to be the ascendancy of passion over reason. In the next place, the greater will be the proportion of members of limited information and of weak capacities. Now, it is precisely on characters of this description that the eloquence and address of the few are known to act with all their force. In the ancient republics, where the whole body of the people assembled in person, a single orator, or an artful statesman, was generally seen to rule with as complete a sway as if a sceptre had been placed in his single hand. On the same principle, the more multitudinous a representative assembly may be rendered, the more it will partake of the infirmities incident to collective meetings of the people... The machine will be enlarged, but the fewer, and often the more secret, will be the springs by which its motions are directed." No. 58

26. Abuses of the legislative process were thus amply recognized by the framers of the federal constitution, as was the need for corrective measures. Indeed, abuse of the legislative process could even undermine the rule of law and threaten the stability of society. No man's life, liberty, or property is safe when the legislature is in session, a perhaps apochryphal court case held. It is, of course, quite impossible to write a constitution that would guard against every possibility of legislative abuse. Where legislative abuse of major consequence can be curbed according to definite constitutional provision, however, then it must be done. That is the case here, and on issues of federal as well as state law.

27. "*... It is the duty of the judiciary to construe the Constitution and determine whether its provisions have been disregarded by the actions of any of the branches of government. (citations) While this court cannot exercise legislative powers (citation), the judiciary has always had the right and duty to review legislative acts in light of the Constitution. As the court said in* Donovan v. Holzman *(1956), 8 Ill. 2d 87, 93: 'The mere fact that political rights and questions are involved does not create immunity from judicial review. (citations),*" as Rock v. Thompson immediately continued

DECLARATORY JUDGMENT ACT

28. The complaint asked for declaratory relief. Contrary to defendants' arguments regarding actions against the State, there is nothing in the Court of Claims Act authorizing declaratory relief. City of Northlake v. Dept. of Transportation, 119 Ill. App. 3d 126, 128, however, held an action for declaratory relief against a state agency was properly brought in the circuit court.

29. Even if this were a political question in the usual sense of the term, the Declaratory Judgment Act of Illinois, 735 ILCS 5/2-701(a) nevertheless provides in pertinent part:

"*... In no event shall the court entertain any action or proceeding for a declaratory judgment or order*

involving any political question where the defendant is a State officer whose election is provided for by the Constitution; however, nothing herein shall prevent the court from entertaining any such action or proceeding for a declaratory judgment or order if such question also involves a constitutional convention or the construction of a statute involving a constitutional convention."

30. As can be seen from the previous discussion and extensive citations, this case very much involves the last constitutional convention. Judging by the discussion of court cases regarding similar matters in the last convention, this case would be the subject of much discussion in any future convention and might even provide impetus to call one. There seems to be no reported case on this provision.

FACTUAL MATTER IMPROPERLY PRESENTED

31. In stating the challenged legislation was passed in compliance with all constitutional, statutory and procedural requirements, the MOTION TO DISMISS of defendants MADIGAN and JONES alludes to facts not in the pleadings. Whether or not the presiding officers of the legislature signed the appropriation in question is a factual matter. Even under the enrolled bill rule, the court may inquire whether the signatures are genuine. *"... the only thing the court can then test would be the signature of the two men,"* said legislative committee chairman Lewis, as noted above. 4 Proceedings 2700

32. If defendants MADIGAN and JONES wish to proceed on the assumption the enrolled bill rule is still in effect, the least they can do is present the signatures in question, in a pleading proper for pleading facts. They should not do so in a §615 motion to dismiss, which can consider only matters of law.

"Defenses which are factual in nature rather than legal are not available to defendant on motion to dismiss, but should be set forth in his answer." 16 ILP 397, Dismissal and Nonsuit §32

"...Factual defenses which may defeat the plaintiff's claim are not available under a motion to dismiss for

failure to state a cause of action (under §615) ..." Costa v. Stephens-Adamson, Inc., 142 Ill. App 3d 798, 800

"...Factual defenses are not available under section 2-615..." Senese v. Climatemp, Inc., 222 Ill. App. 3d 302, 312

UNFAIR HEARING OF DECEMBER 19, 1995

33. In the hearing on December 19, 1995 the plaintiff was not allowed to argue his motion to amend the pleadings and was instructed by the Court to respond to the motions to dismiss. One opposing party was not allowed to make any additional statement in support of its motion. Caught by surprise and trying to remember both sides of the case, the plaintiff did the best he could responding to the "action against the State" argument and offered to answer any questions, being far from satisfied with his own performance. Rather than have the opposition respond, the Court then read a prepared opinion into the record, dismissing the complaint and denying leave to amend. The gist of the opinion is that the plaintiff had presented no theory of his case. Had he been instructed to present a theory of his case, however, which he would have done in arguing the amendment, he would not have tried to suddenly put the theory of the case out of his mind and would have responded quite differently. Among other things, he would have remembered to ask for time to respond to the enrolled bill rule argument presented by defendants MADIGAN and JONES, based on work well underway at the time and presented in large part above. Even if he had remembered that argument in full, however, he still would not have presented a full theory of the case merely in responding to motions to dismiss. When he offered to answer any questions, the Court should have asked those left unanswered. Unbeknownst to him, however, he was actually arguing against a prepared opinion he had not seen, not against the motions he had seen, but had still not heard. This is fundamentally unfair, as fundamentally unfair as not informing a criminal accused of the charges against him.

34. The opinion agreed with the defendants that this was an action against the State, but did not mention any of the constitutional provisions mentioned in the complaint, nor any of constitutional points brought out in the motions and replies, notably that defendant U of I is enforcing an unconstitutional law. As noted in the plaintiff's replies, however, the defendants themselves cited cases holding that constitutional issues do not create actions against the State. Sass v. Kramer is cited in an argument above; another such case is Healy v. Vaupel, 133 Ill.2d 295, 308; so is Smith v. Jones, 113 Ill. 2d 126, which at 131-132 elaborates:

*"... An action against a State official for conduct in his official capacity will withstand a motion to dismiss the complaint on sovereign immunity grounds if the complaint alleges that the official is enforcing an unconstitutional law or violating a law of Illinois and thus acting beyond his authority. (Herget...; Sass...: Senn Park Nursing Center v. Miller, 104 Ill. 2d 169, 187-89) In these cases it is said that the action 'strips a State officer of his official status *** [and] his conduct is not then regarded as the conduct of the State, nor is the action against him considered an action against the State.' (Moline Tool Co. v. Dep't of Rev., 410 Ill. 35, 37)"*

35. Furthermore, Janes v. Albergo, 254 Ill. App.3d 951, 960, in turn citing Senn Park at 189, shows an official NOT guilty of wrongdoing can be sued to perform duties, and NOT in an action against the State:

"'an action to compel a public official to perform a clear and mandatory duty is not an action against the State.'"

"PRAYER" IMPROPERLY ADDRESSED

36. Plaintiff objects to the use of the word "prayer" as addressed to this Court in the conclusion of defendants MADIGAN'S and JONES' motion. Law is, by definition, coercive, as we can see from Federalist 15:

"Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction; or, in other words, a penalty or punishment for

disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. The penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms...."

37. Coerced prayer of any sort is unconstitutional. Engel v. Vitale, 370 U.S. 421, 86 ALR2d 1285, regarding prayer in public schools. For one side to use "prayer" in a court with coercive powers to gain favor over the other is a coercion on the other to likewise use "prayer." This, too, is a federal question.

38. "Prayer" addressed to public officials ought to be considered at least as unconstitutional as prayer in public schools. Not only is it a violation of individual rights, but it is demoralizing to republican government. What else could it be but a throwback to the divine right of kings and judges the arm of the king? One might "pray" to a pharoah or a ceaser or other civil power with pretensions of divinity, perhaps, but not under any American theory of government. How does one "pray" to a servant, even a public servant? How does one "pray" for recognition of a right, in particular a natural, inalienable right, as if it were a mere favor to be dispensed by a suitably buttered up civil power? How does one "pray" to a civil power without creating in it some subtle delusion of divinity? Does the civil power exist of its own right to be served by the people or is it a creature of the people to be of service to them? If the latter, how does one "pray" to one's creature without engaging in idolatry?

39. Any legal system has to base itself on some sense of mutual obligation. It is that sense of obligation that holds society together. Without it even the best laws are useless. The plaintiff has long felt the legal system has a severely deficient sense of obligation in curbing abuses of state power that tend to pull society apart. Further, that that deficiency has something of a chicken-

and-egg relationship with the constant use of "prayer" to address courts. The use of the word "prayer" to denominate communication with civil authorities should have ended with this passage from Thomas Paine's Common Sense, Part III:

"Every quiet method for peace hath been ineffectual. Our prayers have been rejected with disdain; and have tended to convince us that nothing flatters vanity or confirms obstinacy in kings more than repeated petitioning- and nothing hath contributed more than that very measure to make the kings of Europe absolute. Witness Denmark and Sweden. Wherefore, since nothing but blows will do, for God's sake let us come to a final separation, and not leave the next generation to be cutting throats under the violated unmeaning names of parent and child."

WHEREFORE the plaintiff moves for rehearing of the dismissal of this action and denial of leave to amend the complaint.

s / William F. Wendt, Jr.
Plaintiff, representing himself
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421-4862 (landlord)